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M A G I S T R A T E S,  
A N D

*Ministers of Justice :*

A L S O,

*A Guide to Parish and Ward-Officers.*

C O N T A I N I N G

I. Plain Directions for Justices of the

Peace, in material things relating to their Office, in and out of Sessions. 2. To their Clerks, in drawing Forms of Warrants and other necessary Writings. 3. A Help to Grand and Petty Juries. 4. Penalties upon Fore-stallers of Markets, Fairs, Badgers, Drovers, Butchers, Tanners, Innholders, &c. 5. The Rates of Servants Wages, according to Statute Law, &c. 6. Some Directions to Coroners, and their Inquests, in many material things relating to their Office and Duty, &c. 7. Customs and other Advantages peculiar to the City of London, in Privileges, Law-matters, Proceedings in the Court of Requests, Attachments, Court of Orphans, and other things. 8. The Office and Duty of a High Constable, Petty Constable, Head-borough, Tything-man, Bailiff, &c. 9. The Office and Duty of Church-wardens and Sides-men. 10. The Office and Duty of the Overseers of the Poor. 11. The Office and Duty of Toll-keepers and Fair-keepers. 12. The Office and Duty of Surveyors of High-ways, Scavengers, &c.

*The Fourth Edition.*

With Amendments, and large Additions, agreeable to the several Acts of Parliament, in these Cases made and provided, not in any former Impression. By P. S. Gent.

L O N D O N, Printed for Nicholas Boddington, at the Golden Ball in Duck Lane. 1708.

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# The Preface

## TO THE

# READER.

Reader,

**T**HIS little Book may be termed a Posy of choice Flowers, gathered out of divers curious Gardens: It contains a great many things useful and necessary to be known by all English Men, who at one time or other may stand in need of them, by way of Advice, as well as some may do it to put them in Practice. It is a Collection indeed, but such a one, that of this nature scarcely has appeared in any one Volume, though large, and at great Price; and certainly never before in so small a Compass. It contains, however, in Quality more by a great deal, than upon the first view, can reasonably be guessed by its Quantity. I need not instance Particulars, seeing in the Title Page they are briefly set down, and in the Table more at large, though in neither so exactly as you will find them in Particulars, duly placed in the Book.

I cannot doubt but it will be Instrumental in doing a great deal of Good: First, In gi-  
\* 2. ving

## The Preface to the Reader.

ving Men an Insight what they ought legally to do. And secondly, What they ought to avoid, as not warrantable in the one kind to rest secure, and in the other to keep out of Danger, saving themselves thereby much Trouble and Expence. I have mostly quoted the celebrated Books from whence it was taken, and is warranted by those Men exceeding skilful in the Laws of the Land; and for that Particular especially have left Names behind them that cannot be obliterated. Also I have cited such Statutes Ancient and Modern, as the Parliaments have been pleased to make for well ordering the Government, and rendring us a happy People, in the Security they give us as to Life, Liberty, Property, &c. So putting all this together, I doubt not but the Readers Expectation will be answered according to his desire, in that he will find nothing omitted he can fancy material, as far as is proposed, or herein could be contained: and then both of us have our Ends, I in Writing, and he in Reading so useful a Work; as past all Peradventure will find Encouragement, and descend to Posterity, which will be Grateful to a Courteous Reader.

Your Friend to serve you

P. S.

THE

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## R E A D E R,

*Observe these short Directions to know the  
Authors being Alledged or Quoted, as  
you find them set down throughout the  
whole Book.*

**L** Am. or Lamb. or Lambt. Mr. Lambert's Ju-  
stice of Peace. Dal. or Dalt. Mr. Dalton's  
Country Justice of Peace.

Br. Brook; sometimes Ld Chief Justice of the  
Common Pleas.

F. or Fitz. Fitzherbert, sometimes one of the  
Judges of the Common Pleas.

Dy. Dyeo; sometimes Lord Chief Justice of the  
Common Pleas. Dr. certain Directions or Reso-  
lutions of the Judges of Assize. Anno 1643.

Co-

Co. Sr. Edward Coke ; sometimes Ld. Chief Justice of the Kings-Bench, viz. his Book of Reports.

Co. Lit. Sr. Edw. Coke's first part of his Institutes upon Littleton.

Fi. M. Hen. Finch Apprentice del Ley.

P. Pl. Plow. Mr. Plowden's Commentaries.

Ras. or Rast. Rastals Abridgment of the Statutes.

Lib. Intr. The Book of Entries.

Cr. Cro. or Crom. Cromptons Justice of the Peace.

P. Po. or Pol. Mr. Poltons Abridgment of the Statutes. Pr. R. Mr. Polton *de pace Regis*.

B. A. Sir Francis Bacon his Elements of the Common Law. B. A. V. his use of the Law.

Resol. of the Judges Resolution of the Judges of Assize, Anno 1633. to certain Queries.

Wing. Wingates Abridgment of the Statutes.

As for the Statutes cited, I conclude they are easie to be directed to by what is set down from the Names of the Kings and Queens, as 2 R. 2. the Second of Richard the Second. 6 Hen. 7. the sixth of Henry the 7. P. M. Philip and Mary El. or Eliz. Queen Elizabeth. Jac. or Jacobi King James the first, and so of others: For where there have been more Kings of a Name than one the figure is set down to distinguish that King in what Reign the Statute was made, from the rest as Edw. 1. Edw. 2. Edw, 3. Edw. 4.

The Experienced

# Justice of Peace.

*Respect to his Power, in and out of Sessions, in many Cases of great Importance; useful for Justices, their Clerks, and others.*

## CHAP. I.

*Antiquity of a Justice of the Peace, his Power, and what he may do, the Execution of his Office in many material Cases.*

**T**HE Power of a Justice of the Peace is very great, and is a main Prop and Pillar of good Government, in taking Care to prevent and punish Offences, where the Peace is Conserved, and Men maintained their Rights, and the Possessions of their Goods and Chattels, &c. peaceably; whereas, were there not such Over-awing Magistrates, Offenders would be Imboldened to make more  
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frequent Depredations, and Strength and Violence would seize upon what the Weaker could no ways defend against them, were not the Law by this means very much their Aid and Safeguard. This Office is of a great Antiquity, and has all along held up a venerable Esteem, and Good-liking among the People, who find great Advantage, and Benefit by those so Commissioned, being usually Men of Estates, Discreet, and Judicious, capable of discerning Truth from Falshood, and to relieve the Injured, and restrain Oppressors, to punish Criminals, and Discharge the Innocent and Faultless.

Justices of the Peace were Created, 1 *Ed. 3. Chap. 13. Dalt. 6. Lamb. 10.*

But they were first named so by 36 *Edw. 3. Chap. 12.*

A Justice of the Peace is a Judge of Record, from whence called Justices, and before 1 *Edw. 3.* they were called Conservators. 3 *Cro. 29, &c.* He may take Recognizance of Peace, which none can do but a Judge of Record, *Lam. 186. Dalt. 8. Crompt. 196. a Num. 1.*

He is called Commissioner of the Peace, by reason he is Authorized by the Queens Commission so, *Custos Pacis*, or Keeper of the Peace, the same with *Justiciarius Pacis*, or Justice of the Peace. And the Constitution of Justices of Peace is Inherent, and Inseparable from the Crown, *Stat. 27. Hen. 8.* And this power cannot be Transferred, 20 *H. 7.*

His Warrant is not to be disputed by the Constable for any thing wherein he hath Jurisdiction of the Cause, *Dalt. 8. Cap. 147. 6. &c.*

In some Cases the Testimony of a Justice of the Peace is of as great Force, and in some Cases greater than an Indictment of 12 Men upon Oath

Oath, viz. In Case of Presentments of Highways, Force, Riot, *Dalt.* 9. *Lamb.* 65.

A Justice of the Peace being Assaulted, may Commit the Party so offending to Prison, *Dalt.* 371. *Lamb.* 134. *Crompt.* 68. a. If a Justice see one about to make an Affray, and charge him to keep the Peace, and he answers he will not, he may bind him to his good Behaviour, *Dalt.* 294.

A Justice of the Peace must proceed by Prescript of the Statute and Commission, *Dalt.* 22.

Where the Statute referreth the Tryal to the Justice's Discretion, it seemeth he may examine upon Oath, *Dalt.* 20. Every Justice of the Peace is a proper Conservator of Rivers within his County, *Lamb.* 189. And Justices of the Peace at Sessions are of equal Authority, *Lamb.* 385, &c. *Vide Crompt.* 122. a. *Num.* 33.

If a Felon be brought before a Justice of the Peace upon Suspicion, though it appear to the Justice, he be not guilty, nevertheless he may not be set at Liberty, but so that he may come to his Tryal, *Lamb.* 233. *Dalt.* 389. *Cro.* 40. b. *Nu.* 20. Otherwise it will prove a voluntary Escape in the Justice; for he is not to be delivered by any Man's Discretion, *Dalt.* 8. *Lamb.* 223.

## CHAP. II.

*What may be done by a Justice of Peace,  
Ex Officio, &c.*

**H**E may Record a Demurrer upon Evidences, *Lamb.* 539.

He may give Day to the Party, to bring in Records, which is before other Justices, which is Plead by way Justification, *Lamb.* 539.

In Absence of the Queens Attorney, a Justice of the Peace may take Issue with one that pleadeth a Pardon; that he is one of the Parties Excepted, *Lamb.* 540.

A Justice of the Peace may take Money for the Security of the Peace, *in deposito*, where Bail cannot be procured, and which, upon the Party so depositing the Money, breaking the Peace, shall be forfeited to the Queen. *Just. Berkley*, 1 *Cro.* 446.

If upon supposing an Indictment to be void, the Justices have discharged the Prisoner, paying his Fees, yet upon change of their Opinion, they may stay him any time before Judgment. *Lamb.* 540.

Justices of the Peace may inquire of all manner of Felonies at the Common Law, or given by any Statute; and of all manner of Trespasses against the Queens Peace, and such Trespasses wherein Actions of the Case will lye for Trespasses or Deceit, and in the end of the Writ grounded upon the Case, It is contained, *Contra Pacem nostram*, *Crompt.* 8. & *Num.* 25.

Defaults against the Statute of 3 *Hen.* 6. *Chap.* 11. For Levying of Wages for Knights of the Shire, are to be heard and determined by Inquiry for the Queen or Action for the Party before the Justice of Peace. *Lamb.* 512.

A Justice of the Peace has no need to shew his Commission, by which he is made Justice of Peace, when he Justifieth the doing of any thing as a Justice; for he is Justice of Record, and the Commission remaineth with the *Custos Rotulorum* of the same County, and he is called by Commission in open Assize, or Sessions. *Crompt.* 120. *b.* *Num.* 13. *Lamb.* 387.

A Justice of Peace may have his Action of the Case against the Party that calleth him False Justice

## and their Clerks.

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Justice of the Peace; it also seemeth that he may be Indicted, for they may inquire of all Trespases where a Man may have his Action of the Case. *Crompt. 121. a Num. 21, and 122. a Num. 29.*

A Justice of the Peace, Certifying into the Queens Bench, that such a one broke the Peace in his presence, the Party shall be put to his Fine, without a Traverse to the same. *Crompt. 132. a.*

A Justice of the Peace, who is of the *Quorum*, ought to be Resident in the County where he is a Justice of the *Quorum*. *2 Hen. 5. Chap. 4. Crompt. 122. a. Num. 32.*

The Justices at *Newgate*, Sit by Virtue of two Commissions, Goal Delivery, and Oyer and Terminer, *4 Ellz. Chap. 2.* And where the same Persons are Justices of Goal Delivery, and Oyer, &c. They may Sit the same day and place, and inquire by the same Jury, yet the Entry of the Records must be several, as the Indictment is, *Dalt. 168.*

A Justice of the Peace commandeth one by his Precept, under Penalty of 10*l.* to be at the Quarter-Sessions next ensuing it, and he appeareth not, no *Scire Facias* shall go forth more than if there had been a *Subpena*, however it seemeth, he shall be Attached to be at the next Sessions upon Contempt. *Crompt. 123. a Numb. 9.*

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C H A P.

## C H A P. III.

*What one Justice of Peace may do by Power and Virtue of his Commission, without requiring to be joined with another or more, in Acting, in what relates to his Office.*

**H**E may cause all such as are fit, to Work in Harvest, or Hay-time, and after Licencing them to go into any other County.

He may Rate the Prizes of deceitful Malt, to be Sold, by 2 *Edw.* 6. 10.

He may compel one fit in his Discretion, to be bound Apprentice, by 5 *Eliz.* 4.

He may it seems give Directions to Watchmen, Keepers, and Searchers of infected Persons *Lrompt.* 126. b.

He may cause to be Whipped Trespassers in Orchards, Corn, Hedges, or Woods, not able to give any Satisfaction. And it seems he may hear and determine by Examination, or otherways by his Discretion, the Offences committed in Tile-making.

One Justice of Peace may command Vagrant Persons to Prison, if they will not serve.

He may upon his View of forcible Detainers Record it by 15 *Rich.* 1. Chap. 2. *Dalt.* 81. 12.

He may Punish Deceit in Cloth by Tenters, &c.

He may cause High-ways to Markets to be enlarged, and cleansed of Trees and Bushes. 13 *Edw.* 1. Chap. 5.

He may Punish Keepers of Places for unlawful Games, and the Players at those Games.

He may Punish Prophane Swearing in his Presence, made out by Testimony or Conviction by the Party's own Confession.



## and their Clerks.

7

He may punish Offences in Watermen, and Transporters of Corn.

He may punish Defaults of Collectors of Sheffs Amercements, and of Bayliffs of the Hundreds. Soldiers that purloin their Horse or Harshes.

He may prevent a Riot, stay it, and Commit them that are concerned in Acting of it.

One Justice of the Peace, upon Complaint may Commit till the Assizes or Sessions, any Popish Reculant Convicted, above 18 Years of Age, under the Degree of a Baron; so for refusing the Oath of Allegiance, 7 Jac. 1. Chap. 6.

He may cause to be set in the Pillory in the next Market Town, Persons Convicted of Breaking the Assize of Fuel, and not able to pay the Forfeiture, with a Billet, or Faggot bound to his Body. 7 Edw. 6. C. 7.

Quære, whether one alone can Commit him.

He may cause an Unlicensed Alehouse-man openly to be Whipped after Conviction, where there is no sufficient Distress to pay the Penalties, 3 Car. 1. 3.

He may upon View, or Proof by two Witnesses, Warrant the Levying 20 l. Forfeiture for an Unlicensed Alehouse, to be given to the Poor.

One Justice may demand the Peace against another Man. Lamb. 91. And he may punish Persons, going, or riding Armed, contrary to the Statute of 2 Edw. 3.

A Justice may inquire of *Felo de se*, hid, or cast into the Sea, where the Coroner cannot have the View of the Body, 3 Inst. 55. And he may send Writs for Fugitive Labourers, by 2 H. 5. C. 4. St. 1.

He may take an Information out of the County against an Offender in the County. 1 Cro. 213.

A. 4.

So

So a Recognizance to prosecute by Assent the Parties out of the County, but cannot Coercive Power, *Ibid.*

A Justice of the Peace Inhabiting in the Hundred where one was Robbed, may if he be at *York* or *London*, take the Party's Oath, being but Examination, and no Act of Jurisdiction.

A Justice of Peace in *London* ought to send Felons to the Common Goal, not to the Compters. 1. Co. 120.

He may take an Indictment of Barretry, without a special Commission. 2 Cro. 32.

A Justice in open Court may alter the Panel of a Jury Sworn only for the Queen, 2 Co. 59.

One Justice of the Peace is sufficient to certify carrying of Corn from one place to another to sell; against the Statute of Fore-stalling, joined with the Customer.

He may Bind a Cheater to his good Behaviour &c. *Dalt.* 63. 7 *Jacobi* (1.)

He may Convict of Drunkenness, by 12 *Jacobi* (1.) C. 7.

He may Seize the Goods of Gypsies, within a Month after their Arrival, &c. By the 22 *Hen.* 8 C. 10.

He may Record a Riot in his View, and Commit the Rioters, or bind them to their good Behaviour; But single, or alone, proceed no further. *Dalt.* 195.

He may punish spoilers of Fish-ponds, and cause their Nets to be cut and burnt. 17 *Rich.* 2

He may take the Claim of a Horse Stollen 31 *Eliz.* 12.

He may Examine and Bind over unlawful Hunters in the Night time, &c. 1 *Hen.* 7. C. 7. The like of taking or killing Conies in the Night time. 22, 23 *Car.* 1.

## and their Clerks.

9

He may compel a Vintner to draw a Man Vine, who demands it, and offers payment, 4 Hen. 8. Dalt. 242.

He may Convict of the Breach of the Lord's-Day, against Stat. 29. Caroli 2. And may allow of Cause for Travelling in a Boat on the Lord's-Day, according to the said Statute.

## CHAP. IV.

*The Power of two Justices of the Peace, acting jointly within the Compass of their Jurisdiction, by Virtue of their Commission and Office, &c.*

**T**WO Justices of the Peace upon View of a Riot, or Rout, may record the same, and with the Sheriff, or under Sheriff, 13 Hen. 4. C. 7. Crompt. 16. Num. 9. to inquire by a Jury, and Fine the Rioters. Dalt. 195. *Quere.*

Two Justices on Complaint that a Servant departed before his Term ended, &c. Are to Examine, and Commit if they see Cause. See more of Labourers and Servants, of a Constable, &c.

They may Bind one to the Quarter-Sessions, to Answer his Offence against a Penal-Law. Lamb. 187. *Vide Dalt.*

They may allow, and discharge an Ale-House-keeper at Discretion.

There must be two Justices of the Peace for appointing Overseers for Woollen-Cloth for a Year, &c. So to convene Persons fit to discover any Offence in making Deceitful Cloth.

They may imprison for a Year, or less, at their Discretion, Servants for Assaulting their Masters, may compel Women to serve for such Wages, and manner as they think fit. They may Tax a Hundred towards the Relief of the Poor of a

## A Help to Justices,

Town within it, wherein the Inhabitants are thereby overcharged, and not able to keep the Poor; and they may Tax others of a County for the Relief of Places Infected.

They may dispose of at Discretion all Forfeitures to grow and become due, on the Statute of Rogues.

They may Assess all Parishes within the Hundred, proportionably, towards Contribution for the Parties charged upon a Robbery.

They shall take Order to set poor Soldiers to Work, who cannot get Work; for want of Work Tax the Hundred for Relief. 21 Jac. c. 28.

Two Justices may Fine the Head-Officers of Burroughs and Market-Towns, who are remiss in viewing the Weights and Measures, and break and burn those that are defective; and Fine Buyers and Sellers with unlawful Weights, at Discretion.

They may allow Surveyors, and their Servants to make Materials in another Parish, for mending the High-ways where they are defective.

Two Justices, one being of the *Quorum*, upon Complaint of the Church-wardens, may Convene before them the Bailiff and High-constables, and take their Accounts of Forfeitures and Defaults Estreated concerning High-ways.

Two Justices of the Peace in London, may determine the Matter of Buildings, and Inhabitants there. 35 Eliz. c. 6.

They shall allow Scavengers under their Hand to Confirm a Tax of Constables, Church-wardens and Surveyors, &c.

Two Justices of the Peace may take an Oath of the Under-Sheriff, Bayliffs, &c.

Two Justices of the Peace, one being of the *Quorum*, may Commit any Person under the

## and their Clerks.

IN

of a Baron, being above 18 Years of Age, for  
 using to take the Oath of Allegiance, &c.

They may take the Submission of Persons  
 brought up in a Jesuits Colledge.

They may, one being of the *Quorum*, Bail a Per-  
 son Arrested for Manslaughter, Felony, or on sus-  
 pition of them.

They may take Order about a Bastard-child laid  
 in the Parish, 18 *Eliz.* 7 *Fac.* 8c.

They may Administer the Oaths of Supremacy,  
 and of the Office, to Bailiffs of Franchises.

They may punish destroyers of the Kings  
 game, or such as keep Hunting-dogs. 1 *Fac.* 1.

7. 7 *Jacobi* 1. 11.

They may sign a Testimonial of a Servant turn-  
 ed out of place, or one whose Master is dead.

1 *Eliz.* c. 11. *Lamb.* 331.

Two Justices may Convict any one of Opposing  
 the Execution of the Statute against Planting  
 Tobacco in England. 12 & 13 *Car.* 2. *Dalt.* 227.

to Warrant destroying it, and Convict Refu-  
 sers to Assist. *Ibid.*

They may License poor People Diseased, to Tra-  
 vel to the Bath for Remedy, &c. 39 *Eliz.* 4.

They may send to a Work-house, Prisoners  
 brought before them by *Habeas Corpus*, according

to 30 *Car.* 2.

Two Justices, one of the *Quorum*, may take an  
 indictment and Inquisition. *Lamb.* 48.

Two Justices of the Peace may Warrant Con-  
 stables in Searching Houses for Setting-dogs, and  
 Nets for taking Partridges. 7 *Fac.* 1. C. 11.

They may commit for 3 Months, Shooters of  
 Partridges contrary to 1 *Fac.* 1. C. 27. Unless

each so Offending pay 20 s. They may proceed

upon Offences against the 13 *Eliz.* of Hedge break-  
 ing, &c. Done to one of them.

Two Justices of the Peace, with the Bishop or Chancellor, may call Collectors of Hospitals to Account, 14 *Eliz. Chap. 5.*

They may bind over one Suspect of Counterfeiting Tokens and Letters. 33 *Hen. 8. 1.*

They may search for Popish Books and Relicks 3 *Jac. 1. C. 5.* They may punish Defaults of the Overseers of the Poor.

They may punish Offenders in disturbing the Execution of the Statute against Rogues.

They may send to the House of Correction Persons about to leave their Family to the Parish 7 *Jac. 1. C. 4.* They may Examine Offenders in Buck-stalls, against the 19 *Hen. 7.* At the Sessions, &c.

They may Warrant the Church-wardens and Overseers to Levy Arrears of the Rates for the Poor.

Two Justices of the Peace, one being of the *Quorum*, may Reform false Measures, or Neglect of Clerks of the Market. *Dalt. 251.*

Two Justices of the Peace to Convict of not Reading Common-prayer. 14 *Car. 2. cap. 14.*

They may Bind over to the Assizes, or Sessions one suspected of Deceit, by Counterfeit Letters and proceed in like Nature in some other Matters of lesser Moment; and for many things more fully set down and Explained, *vide*, the Offices of Constable, Church-warden, Overseer of the Poor, Surveyors, &c.

C H A P. V.

*What may be done by Three Justices of the Peace, Conjun<sup>d</sup> in the Execution of their Office, according to several Statutes, &c. Impowering and directing them thereto.*

**T**Hree Justices of the Peace may call unto Examination before them, the bestowing of Money in Mending the Highways, by the Statute for mending Highways, or Bridges, 14 Eliz. 4. 30 Eliz. 18.

They may, one of them being of the *Quorum*, License-Glass-men, to Travel without Begging in the County. 39 Eliz. C. 4

They may take the Oaths of two Witnesses, of Depraving the Sacrament. 1 Ed. 6. 1.

They may License under their Seals, one of them being of the *Quorum*, Badgers and Drovers. 5 Eliz. 12.

They may Confirm By-Laws in *Norfolk* for *Norwich* Stuffs, with others, &c.

They may Consent to a Petition, by 13 Car. 2. 5.

They with the Bishop and his Chancellor may Examine the Employing the Poor's Money, &c. 14 Eliz. 5. 39 Eliz. 10.

They may, one of them being of the *Quorum*, take Examination of those that Maim Horses, Cattle, or that destroy Nurseries, or other young Trees, and throw down Inclosures in the Night unlawfully, &c.

They may License Buying of Corn, to carry from one Port to another. 5 Eliz. 12.



## C H A P. VI.

*What may be done by 4 Justices of the Peace, Con-  
junct in the Execution of their Office, as afore-  
said, &c.*

**F**OUR Justices of the Peace may Discharge under Seal an Apprentice Hardly, and Ill-used.  
*5 Eliz. Dalt. 120.*

They may Tax the Inhabitants, and make Col-  
lectors and Overseers for the repairing a Bridge,  
where it is not known who ought to repair it,  
*22 Hen. 8. C. 5.*

They may seize a Recusant's Arms, and Armour,  
Ammunition, &c. *3 Jac. 1. c. 5.*

They may consent with the Sheriff, or Goaler  
of a Corporation, for the removing of Sick Persons  
that are Prisoners, or others. *19 Car. 2. C. 4.*

They may License a Recusant to Travel above  
*5 Miles* with the Assent of the Bishop, or Lieu-  
tenant, &c. *35 Eliz. 3. Jac. c. 5.*

They may Remand by Warrant under Seal, Ma-  
lefactors flying into *England*. *7 Jac. 1. C. 1.*  
*Dalt. 541.* And indeed thus Conjunct they have  
great power in the Execution of the Office of the  
Peace, where Matters lie within their Jurisdic-  
tion, as to what relates to the Conservation of the  
Peace, and keeping good order in the Govern-  
ment, and saving the Subject from Wrongs.



CHAP. VII.

*That Six Justices of the Peace, Conjoint in the Execution of their Office may do, &c.*

**S**IX Justices, one being of the *Quorum*, may Execute the Laws of Commissioners of the Sewers. *Dalt.* 219.

They may appoint a Common-Goal, for the Sheriff to have the Custody of it. 13 *Hen.* 8.

Six Justices in Commission of the Peace, with the Justices of Assize: by 12 *Rich.* 2. c. 1.

Eight Justices of the Peace, besides the Lords, by 14 *Rich.* 2. c. 11. So two Lawyers in every County. 18 *Edw.* 3. c. 2.

The greatest part of the Justices of the Peace, to order the House of Correction in every County.

The greatest part to Tax other Parishes for the Poor, where there is an Insufficiency in the Parish, or Hundred. 43 *Eliz.* c. 2. So to employ the Overplus of the Maimed Soldiers Stock to the Use of the Poor. 43 *Eliz.* c. 3. And to Tax for the Relief of Maimed Soldiers. So to Accounts of Treasurers for Maimed Soldiers. 43 *Eliz.* c. 3.

CHAP. VIII

*What is to be considered and meant, by the next Justice in a County, &c.*

**T**HE next Justice may License Mariners to Beg, having been Shipwrecked. 39 *Eliz.* c. 4. *Lamb.* 303. *Dalt.* 209. 227.

Where-

Where the Statute ordereth the Justice might to do Execution, &c. As in 13 Hen. 4. Of Riots under the Penalty of 100 l. for Forfeiture he is excused, if another Justice, (not next,) do the Office.

He may cause Fishermen to be Mariners by the Queens Commission. 5 Eliz. C. 5. Lamb. 359 Dalt. 139.

The next Justice is to send a Prisoner to a Work-House, &c. 30 Car. 2.

## C H A P. IX.

*Of certain Forfeitures by Statute given to 8 Justices of the Peace.*

**F**OR every Day he Sits upon the Statute of Labourers, not exceeding 3 Days, 5 s. So the Mayor, or Head Officer in Corporations, &c. out of the Fines arising on the Stat. &c.

For every Day which Sessions is kept, which may be 3 Days, they shall have out of the Fines coming to the Sheriffs Hands, by reason of the Sessions, 4 s. and their Clerk 2 s.

Two Justices of the Peace shall have a part of Defective Cloth, Seized and Forfeited. 5 Edw. 6. Lam. 359.

Justices who examine Offences of Deer-Hays, and Buck-stalls, shall have the tenth part of Forfeiture, 19 Hen. 7. C. 11.

C H A P. X.

*The Fees of Justices of the Peace, or such as they ought to take in the following Cases, according to Crompt. 179. a. and Dalt. 78.*

**F**OR a Recognizance of the Peace, 2 s.  
 For a Recognizance to Bail a Prisoner, 2 s.  
 For a Superfedeas of the Peace, 2 s.  
 For a Warrant of the Peace Sealed, 2 s.  
 For a Release of the Peace, 2 s.  
 For a Warrant not of the Peace, 4 d.  
 For a Recognizance of an Ale-house-keeper, 12 d.  
 For the Inrolment of a Deed, the Land not exceeding 40 s. *per Annum*. To the Justice one Shilling, and to his Clerk one Shilling. But if the Land exceed 40 s. then 2 s. 6 d. to the Justice, and the like to his Clerk.

C H A P. XI.

*Where a Justice of the Peace lies liable to be Fined for Neglecting, or Transgressing in his Office or Duty, &c.*

**I**N the Case of Bailing one notailable, and refusing to Bail oneailable, and Detaining him, he lies liable to a Fine, and to pay double to the Prisoner. 3 *Edw. 1. C. 15.* 23 *Hen. 6. C. 10.*

In the Statute against Riots, if he does not execute it, he is Finable 100 l. 13 *Hen. 4.* So in that of forcible Entry, 10 l. 8 *Hen. 6.*

In neglecting to take Order about a House of Correction, 5 l. to go towards the building it. 1 *Jac. (1.) C. 4.*

Exer-

Exercising his Office before the Oath taken  
*Dalt.* 14. For not being present at the Annual  
 Tax of Servants Wages, 10 l. 5 *Eliz.* c. 4.

If a Justice of the Peace does not in 40 Days  
 certify unto the Queens-bench Presentments of  
 Extolling the Popes power, he forfeits 100 l.  
 5 *Eliz.* c. 1.

For Imbefelling, wilfully Rasing, maliciously  
 Inroling an Indictment not found, changing an  
 Indictment of Trespas into Felony, is Fine and  
 Imprisonment, and loss of Office, *Lam.* 631.

## C H A P. XII.

*Where a Justice of the Peace lies liable to Punishment.*

**H**E may be Imprisoned for taking Bond in his  
 own Name, and not in *Domina Regina*, the  
 Matter concerning the Queen. 33 *H.* 8. C. 9.

For Conspiring with another to Indict a Stranger  
 at the Sessions, otherwise as a thing done by him  
 as Judge. *Crompt.* 122. a. *Num.* 32.

Where a Justice fails to do Justice, he may be  
 put out of Commission, and punished. 4 *Hen.* 7.  
 C. 12. *Crompt.* 120. *H. Num.* 6. *Lam.* 370. So for  
 refusing to take Surety for the Peace, when it  
 is Tendred. *Vide Crompt.* Jurisdiction of Courts.  
 31. B.

For Embefelling and Rasing Records, he  
 forfeits his Office, and may be Fined, *Vide*  
*antea.*

## C H A P. XIII.

*Some Directions in making out, or granting Warrants by a Justice of the Peace, and how to be Executed.*

**A** Warrant in Writing must be under the Justices Hand and Seal, his Hand at least. *Dalt.* 460. *Lamb.* 85, 88. However it is better if it be Sealed, as the usual way is. *Dalt.* 460.

A Warrant of the Peace, or good Behaviour, must contain the special Matter. *Dalt.* 460. *Lamb.* 87.

A Warrant for Treason, Murder, or such like Capital Offence, need not contain the special Matter, or Cause. *Dalt.* 160. *Crompt.* 148. a.

If a Justice of the Peace, being out of the County, Grants his Warrant to be served in the County, the Officer making the Arrest, must carry the Party before some Justice of the Peace within the County. *Lamb.* 91. *Dalt.* 461.

A Justice of the Peace may make his Warrant to come before himself, yet in a Warrant for the Peace, the usual manner is otherways. *Cro.* 5. 59. *Dalt.* 461.

Upon a General Warrant, an Officer may chuse to go before what Justice he pleases. *Dalt.* 49. 5. *Cro.* 59. b.

If a Justice of the Peace make a Warrant beyond his Authority, it is not disputable by a Constable, or other Officer, but must be obeyed, unless it be to do a thing out of the Justice's Jurisdiction in a Cause where there is no Judge; for if in this latter Case the Officer Execute the Warrant, he is punishable. *Dalt.* 8. 465. *Lamb.* 65. *Crompt.* 147. b. *Lamb.* 91, 92. *Dalt.* 865.

A Warrant directed to two jointly to Arrest *Party*, he may be Arrested by either of them.

A Warrant made in the Queens Name, ought to be made to all Ministers, as well within Liberties as without. *Dalt.* 355.

Warrants may be made either ( 1. ) in the Name of the Queen, or ( 2. ) in the Name of the Justice, and either of them must be testified by the Justice from whom they Issue, or ( 3. ) without Stile, by Supercription of the Justice. *Dalt.* 385.

See more of Warrants, in the *Office of Constables* in this Book, and how they are to be Executed.

Sessions held by one Justice of the Peace are not good, though it were Summoned by two and Stiled by their Names; but two sufficient Justices Warrants Sealed ( *Quorum*, &c. ) *Vide Dalton*, &c.

Quarter-Sessions are to be held 4 times in the Year, viz. The first Week after *St. Michael*. The second after *Epiphany*, the close of *Easter*, and after the Translation of *Thomas the Martyr*, which is *July 7*. *2 Hen. 5. Chap. Lamb. 597. Dalt. 531.*

Justices of the Peace shall hold their Sessions 4 times in the Year, viz. One within the *Octave* of *Epiphany*, the Second in the second Week of *Lent*, the Third between the Feasts of *Pentecost* and *St. John Baptist*, the Fourth within the *Octave* of *St. Michael*. *36 Edw. 3. 1. Chap. 12. Dalt. 531. Crompt. 123. B. Num. 15. &c.*

The place where Sessions is to be held is Arbitrable, and therefore though by Summons they are to be kept in one place, yet they may be kept in another, but then there can be no Amercement for Default of Appearance. *Lamb. 383. 384.* But they must be kept within the County. *Dalt. 531.*

So in a Town Corporate, but not to inter-  
dle.

Two Sessions at one time for one County Law-  
y Summoned at two places are good, but Ap-  
pearance at one shall excuse the default of an Ap-  
pearance at the other, and Presentment taken be-  
either of them, shall stand good, *Lamb.* 384.  
punishable without notice.

At a general Sessions, all Matters Enquirable by  
ices of the Peace, either by Statute, or their  
ommission, ought to be given in Charge; other-  
se at special Sessions. *Lamb.* 613. And may be  
ld 3 days. 606. 12. R. 2. C. 10.

At the Quarter-Sessions, Officers and Ministers  
the Court, and Jurors of the County, owe  
eir Attendance. *Lam.* 386.

Jurors not appearing according to Summons,  
e Punishable for loss of Issues, the usual part  
Estreats.

Constables making Default are Fineable.

The Justices of the Peace, if need require,  
ay keep a special Sessions by Virtue of their  
ommission, or by the Statute. 1 *Hen. 5. Chap. 4.*  
*Lamb.* 623.

All Matters within the Commission, or Statute,  
ay at a special Sessions of the Peace be given  
Charge, yet they are at liberty to give in-  
charge, either all, or any of them. *Lamb.*  
623, 624.

If two Justices of the Peace, one being of the  
quorum, make a Precept to the Sheriff for the  
olding a Sessions at such a place, and day, and  
return a Jury before them, other Justices can-  
ot by their Superseas Inhibit it. *Crompt.* 126.  
But the Queen by her Writ of Superseas may  
Discharge it. *Ibid.*

All

All that come to the Sessions for publick Service, or upon Compulsion, upon Complaint, and Examination of the Matter, upon Oath shall be freed from any Arrest upon Original Process. *Lamb. Cro. 190. B. Lamb. 402.*

Indictments are many times Tried the same Sessions wherein the Persons were Indicted, yet the same Day before Justices of Goal-Delivery or Justices of Oyer, &c. *Dalt. 537. 1 Cro. 314, 438, 448.*

But in Case of Felony it seems very reasonable to be deferred to the next Sessions, upon Cause shewn; it being so in an Indictment of Nuisance generally; and Life is more to be valued and favoured, &c. *Dalt. 537.*

Many things of great Import cannot be done but at the Sessions, and some but at such a particular Sessions. *Dalt. 537.*

Of the first sort are the Discharge of Apprentices Ill-used, Badgers, Licensed Officers Sworn (after the Sacrament received, proved) and declaring against Transubstantiation, &c. *Dalt. 538.*

The second is taking Account for Maimed Soldiers of the Treasurers, and for Charitable Uses, &c. 43 *Eliz.* in *Easter Sessions*, the Rate of Wages in *Easter Sessions*, and six Weeks after. *Dalt. 538.*

Making Order in the Chamber after the Adjournment of the Sessions, as for the Bastard Children, and Settlements, and some other Things and Matters. But not to be tedious to the Reader, I shall here close Treating of Matters of this Kind, and proceed to others Executed.



## C H A P. XIV.

*Mittimus's, and their Form, and what is to be considered in them, &c.*

A Mittimus must contain the name of the Party, or Parties, his, or their Offences, and the time of Imprisonment, that it may appear whether the Prisoner be Bailable, or not. *Lamb.* 297. *Dalt.* 439, 406. *Crompt.* 153. *A. Num.* 11.

If one be Committed without Bail, or Mainprise, and the Cause be expressed in the Mittimus, and yet is Bailable, other Justices may Bail him; yet Quære, seeing their Authority is equal, *Dalt.* 439. But if no Cause be expressed, other Justices shall not do well to Bail him without the Privy of the first Justice, or Justices, because the Cause of Commitment probably may not be Bailable. *Dalt.* 439.

If the Mittimus be General, the other Justices that Bail must take notice at Peril. *Ibid.*

There is a Writ called a Mittimus, for removing records of Outlawry, Judgment in the Queens-bench, &c. Unto the common place, or an Act of Parliament unto the Queens-bench, &c. See of this, 1 *Cro.* 134, 298. *Hob.* 111, 135.

*The Form of the Mittimus see.*

To send Rioters to Goal, *Lamb.* 321. To send Shooters in Pieces to Goal. 229. *Dalt.* 515.

To send upon Forcible Entry, &c. *Lamb.* 150.

20. To send to the House of Correction. *Dalt.*

513. To send an Ale-seller without License.

*Dalt.* 512. To send a Reputed Father of a

P. Ballard. *Ibid.*

## C H A P. XV.

*Of Recognizances, what they are, and how, and in what Cases to be taken by a Justice of the Peace, &c.*

**A** Recognizance of a Bond of Record, Testifying the Recognizor to owe a certain Sum of Money to some other, and that Acknowledgment of the Sum is to remain of Record, and none can lawfully take it, but a Judge or Officer of Record. *Dalt.* 457.

Every Recognizance taken by a Justice of the Peace must be made by these words (*Domina Regina*) and great Care to be had in so doing; for it is Imprisonment for any Person to take it otherwise. For these Words *Domina Regina* import and imply, the Recognizor is bound to our Lady the Queen, and not to any other. 33 *Hen.* 8. *Chap.* 9. *Crompr.* 196. *B.* *Num.* 11. *Lamb.* 162. *Dalt.* 276.

Sureties in Recognizance ought to be Subsidy Men, and they must be two besides the Party himself. *Dalt.* 276. *Lamb.* 101.

It is in the Discretion of a Justice of the Peace, if he take a Recognizance, *Ex Officio*, to appoint the Number of the Sureties, their Sufficiency in their Goods and Lands, and the Summ of Money, and how long the Party shall be Bound. *Dalt.* 275. *Lamb.* 100.

Recognizance for the Peace, unless the words be expressed for keeping of the Peace, seemeth void. *Lamb.* 103. *Dalt.* 264. 276. *Coram non Judice.*

So it is if a Recognizance be that the Recognizor shall not Beat or Maim. B. without the Expressing the keeping the Peace in it. *Ibid.*

A Recognizance expressing no time of Appearance, but generally to keep the Peace is good. And so these few may serve to give a Light to others; for they are many; and in the Main they tend to one and the same thing, though in Circumstances many.

C H A P. XVII.

*Sessions and Matters properly to be done, &c. by Justices therein, &c.*

THE Sessions is the Assembly of any two, or more Justices of the Peace, one being the *Quorum*, at a certain Day and Place within the Limits of their Commission, appointed to enquire by a Jury, or otherwise to take Knowledge, and thereupon to hear and determine according to their Power, of Causes within their Commission and Statutes referred to their Charge. *Lamb. 378.*

A Sessions held without Summons is good, but in such Case none shall lose any thing for Default appearing. *Lamb. 380, 381.*

Summons of the Sessions is usually by Precept written to the Sheriff, and by him to be returned at the Sessions. *Lamb. 381.*

Precepts for Summoning the Sessions, may be made by any two Justices of the Peace, one being of the *Quorum*, but not the *Custos Rotulorum* alone; and Summons cannot be discharged by Superfedeas of all other Justices, but by Superfedeas of the Court of Chancery. *Lamb. 382, 383.*

*The Justice of Peace his Clerk, &c. his business relating to Warrants, Hue and Cry, Order for Bastard-Children, Recognizances, Mittimus's, Releases, Bailments, Supersedeas, &c. in due Form Latin and English, and other things, with Observations, or Notes thereon for better Information.*

*Instructions for Clerks to Justices of the Peace, containing many necessary Forms, or Precedents of Warrants on several Occasions, directed to Constables.*

As for Warrants grantable by Justices of the Peace, they may be stiled and made after several manners, viz.

1<sup>st</sup>. In the Name of the Queen, and yet the *Teste* may be under the Name of the Justice, or Justices of the Peace who grant them.

2<sup>dly</sup>. Or they may be stiled and made only by the Name of the Justices so granting.

3<sup>dly</sup>. Or else be made without any such Stile and only under the *Teste* of the Justice of Peace or only subscribed by the Justice, as the Cause requires. But not having room for every particular the Nature of things in this case requires in so small a Book, I shall only set down what are most common and useful in their order.

*The Form of a general Warrant for a Misdemeanour.*

*Bucks. T. G. Esquire, one of the Justices of the Peace, &c. to the Constables of D. &c. in the said County, and to every of them. These are to will and require you, in Her Majesties Name, straightly to charge and com-*  
mand

and you upon sight hereof, to attach, and  
thwith to bring before me the Body of  
P. Baker, to answer such Matters of Mis-  
meanour in Her Majesties behalf, as shall be  
ected against him; and hereof fail not at  
ur Peril. Given under my Hand, &c. ( or )  
ted, &c.

*the Form of a Warrant for the good Behaviour to  
the Constables, &c.*

*Bucks.* Forasmuch as *A. B.* of your said  
own is not of good Name, or Fame, nor of  
nest Conversation; a Rioter and Disturber  
the Peace of our Sovereign Lady the Queen,  
we are given to understand by the Com-  
aint of sundry credible Persons; Therefore  
the behalf of our Sovereign Lady the  
Queen, we straitly charge and command you,  
either of you, immediately upon sight  
reof, you or one of you require the said  
*B.* to come before me or some other of Her  
Majesties Justices of the Peace, to find suf-  
ficient Sureties and Mainprize, as well for his  
od Abearing towards our said Sovereign Lady,  
all Her Leige People, until the next Quarter-  
sessions to be holden in the said County, as also  
his Appearance then and there; and if he  
ll refuse so to do, that then you him safely  
nvey, or cause to be Conveyed to the com-  
on Goal of the County aforesaid, or to the next  
al of Her Majesty's in the said County, there  
remain untill he shall willingly do the same.  
that he may be before the Justices of the  
ace of our said Sovereign Lady the Queen  
thin the said County, at the next general Ses-  
sions of the reace to be holden for the County,  
d there to Answer our said Sovereign Lady

for his Contempt on this Behalf. And see that you certifie your Doings in the Premisses to the said Iustices in the said Sessions, bringing them thither this Precept with you. Given at *B.* under my Hand and Seal the fourth Day of December, &c.

*The Form of a Warrant immediately in the Queens Name, Grantable by Iustices of the Peace.*

Anne by the Grace of God, Queen of Great Britain, &c. To our Sheriffs of our County of Oxford, the high Constables of the Hundred of *R*— The Petty Constables of the Town of *B*— And to all, and singular, our Bayliffs, and other Magistrates in the said County, as well within Liberties, as without, Greeting; Forasmuch as *L. B.* of &c. hath come before Sir *W. M.* Knight and Baronet, one of our Iustices of the Peace within the said County, and hath, &c. Concluding in the Iustices Name thus: Witness the said *W. M.* at *B.* the — Day of — &c.

¶ Here Note, that wherever the Warrant is made in the Queens Name, as afore, there it seemeth it ought to be directed to all Ministers, as well within Liberties as without; for the Queen is made a Party; and so it may be done it seemeth in all other Warrants, especially for Felony, or for the Peace, or good Behaviour, &c. because it is the Service of the Queen, and no Franchise or Liberty shall be allowed, or hold place against the Queen, *Br. Franch.* 31. However it is further held, that the Iustices of the Peace of the County may not intermeddle in any City, Town, or Liberty, which have their proper Iustices, *Vide Dalt Chap 8, Folio 25.* Where you will find it set down more largely.

*The Form of a Warrant for the Peace.*

*Surrey.* To the Constables of C. &c. and to either of them.

Forasmuch as *A. B.* of your said Town, Yeoman, hath required Sureties of the Peace against *T. L.* of your said Town, Labourer, and withal hath taken his Corporal Oath before me, that he requieth the same, not for any private Hatred or Evil Will, but simply that he is afraid of his Life, or the Hurting or Maiming his Body, or the Burning of his Houses; These are therefore to Will and Require you in Her Majesties Name, traitly to charge and command you, that immediately upon the sight hereof, you, or one of you require the said *T. L.* to come before me, or some other of Her Majestys Justices of the Peace within the said County, to find sufficient Sureties, as well for his Appearance at the next Quarter-Sessions of, &c. to be holden for this County; as also that the said *T. L.* shall in the mean time keep Her Majestys Peace as well towards Her said Majesty, as towards all People, and especially towards the said *A. B.* and that if he shall refuse so to do, that then you do immediately convey the said *T. L.* to the common Goal of the said County, there to remain until he shall be willing to do the same, and see that you certifie your Doings in the Premises to the Justices of the said Sessions, and have there this Warrant. Dated at, &c.

*The Form of a Warrant to search for stollen Goods.*

*Com. Surrey.* To the Constables of R. &c. and to either of them.

Whereas Complaint hath been made to me *W. C. Esq;* one of the Justices of the said County,



by L.G. of C. That upon *Tuesday* Night last, he had Feloniously taken from him certain Goods [*here name them:*] And that he is given to understand that there are divers Parcels of such Goods in the Hands, or Houses of divers suspected Persons within your Town: These are to Will and Require you, and in Her Majestys Name, straitly to Charge and Command you, that immediately upon the receipt hereof, you make diligent search in all and every such suspected Houses, and Places within your Town and Parish, as you and this Complainant shall think convenient, and if upon your said Search, you find any of the said Goods, or any other just Cause of Suspicion, that then you bring all such suspected Persons as you shall find, together with the said Goods, before me, or some other of Her Majesty's Justices of the Peace for the said County, to make Answer thereto; and hereof fail not at your Peril. Dated, &c.

*The Form of a Warrant to search after a Robbery Committed, directed to the High Constables.*

Whereas there have been of late many Robberies committed about D. Now for the better finding out such Lewd Persons, we whose Names are here under-written, being Her Majesty's Justices of the Peace for the County of *Middlesex*, have thought fit, and do hereby Will and require you in Her Majesty's Name, that forthwith you direct your Precepts to every Petty Constable within your several Hundreds, Commanding them to make Search in all Inns, Ale-houses, and other suspected Houses within your Precincts; for all such Persons as are Masterless, or out of Service, as also for all Idle, Vagrant, wandring Rogues, Beggars, and o-  
ther



her Persons : And further, that they the Petty Constables within the Precincts, do take Examination and Account of all those, and such other Persons as be common Ale-house-haunters, or which expend their Money in Riot, or which do not Labour for their Living, and have not whereon to Maintain them, and that the same Searches be holden all over your Hundreds the same Night, and at such other several times, as in your Discretions shall seem meet. And if any such Persons shall be found in the same Searches, and that upon yours, or the Petty Constables, Examination taken of them, or any of them, there shall be found any Cause of Suspicion in them, or any of them, that then they bring the said Persons so suspected before us, or some one of us, or some other of the Justices of the Peace of this County, to be further Examined in the said Causes, and to be further dealt withal according to Law and Justice. And for the better doing hereof, we require you to Command in Her Majesties Name, that every Petty Constable within their respective Precincts, do Require and Charge two chief Discreet Headboroughs in every Parish to Assist the Petty Constable in this Service, And hereof fail not at your Peril, &c. Dated, &c.

*The Form of a Warrant for a Person who hath dangerously Hurt, or Wounded another, &c.*

*Surrey.* To the Constables of C. &c.

Forasmuch as I am Credibly informed that C. G. of your Town, Carpenter, hath now, or lately dangerously Hurt, or Wounded one G. F. of your said Town, Brick-layer, by a Blow, or Blows which he hath given to the said G. F. on the Face and Head, &c. So that the said G. F. is in danger of Death thereby. These are therefore

in Her Majestys Name, straitly to Charge and Command you, that immediately upon sight hereof, you, or one of you do bring the said C. G. before me, or some other of Her Majestys Justices of the Peace of this County, to find sufficient Sureties, as well for his Appearance before Her Majestys Justices at the next General Goal-delivery to be holden for the County, then, and there to Answer unto the Premisses, and to do and receive therefore that which by the Court shall be Enjoyned him, as also that he the said C. G. shall in the mean time keep the Queens Peace towards Her said Majesty, and all Her Liege People, and especially towards the said G. F. and hereof fail not at your Perils. Dated, &c.

*The Form of a Warrant for a Reputed Father of a Bastard-child.*

*Surrey.* To the Constables of P. &c.

Whereas Complaint hath been made unto me L. C. Esq; one of Her Majestys Justices of the Peace for the said County, by M. G. of your Town, single Woman, that she is gotten with Child by R. B. also of your said Town, Barber. These are therefore to Will and Require you, and in Her Majestys Name straitly to Charge and Command you, and either of you, that immediately upon Receipt hereof, you Attach the Body of the said R. B. and thereupon bring him before me, or some other of Her Majestys Justices of the Peace for the said County, to find sufficient Sureties, as well for his Appearance at the next General Sessions of the Peace to be holden for this County, as also for his good Behaviour towards Her Majesty, and all Her Liege People in the mean time, and hereof fail not, as you will Answer the contrary at your Peril. Dated, &c.

C H A P. XIX.

*An Order of the Justices of Peace for a Bastard-child.*

The Order of *L. C. Esq;* and *R. G. Esq;* two of Her Majesties Justices of the Peace for the County of *S.* made for the Relief of the Parish of *C.* of the said County, for the keeping of *E.* a Bastard child Begotten by *R. B.* of *C.* &c. On the Body of *M. G.* &c.

*Imprimis.* Upon the Examination of the said *M. G.* duly by us taken, we do find that the said *R. B.* is charged to have divers times Bodily and carnal Knowledge, between such Times, (Here name the Times) and to be the only Father of the said Bastard-child, &c. And therefore we do Order and Adjudge him the said *R. B.* to be the Reputed Father of the said Child.

We do further Order as followeth:-

*First,* That the said *M. G.* shall keep her said Child till it comes to 8 Years of Age.

*Secondly,* That the said *R. B.* upon notice of this Order, shall after such notice pay unto the Hands of one of the Overseers of the Poor of *C.* for the Time being, after the Rate of 2 s. 6 d. every Week, to be paid Monthly every Year, towards the Relief of the said Child, until it come to 8 Years of Age.

*Thirdly,* That after the said Child shall come to the Age of 8 Years, &c. That the said *R. B.* pay to the Overseers, &c. Five Pounds towards putting out the said Child to be an Apprentice, &c.

*Fourthly,* That the said *R. B.* presently give good Security to one of the Overseers, &c. To perform this our Order.

Note, that by altering the Names, and Sum, as the Order in that Case shall be made. This Order is in Form with the Variation of the Town,

and County, may generally serve on this Occasion.

*The Form of a Warrant for a Fugitive Servant.*

*Middlesex.* To the Sheriffs, &c.

Whereas G. C. being Lawfully Retained in Service with M. B. of D. &c. is departed from his said Master's Service before the end of his Term, without his Master's Leave, or Licence (or without any reasonable Cause) contrary to the Laws and Statutes of the Realm in this behalf provided. These are therefore to Command you, and every of you, that you, or some of you do Attach the Body of the said G. C. and bring him before me, or some other of her Majesties Justices of the Peace, to find sufficient Sureties, well and faithfully to serve his said Master according to the Covenant between them made. And if he shall refuse thus to do, that then you cause him to be conveyed safely to the Common-goal of the County aforesaid, there to remain till he shall be willing to do the same; and see you certify such your Doings at the General Quarter-Sessions of the Peace, to be held for the said County. Given under the Hand of me W. S. one of Her Majesties Justices of the Peace within the said County. Dated, &c.

Or thus: That if the said G. C. is willing his said Master to serve again, you do cause him to be delivered, and if that to do he shall refuse, that then you cause him to be conveyed to the Goal, &c.

*To Bind one to give Evidence.*

*Surrey.* To the Constables of B. &c.

These are in Her Majesties Name, to Charge and Command you, or either of you, that immediately upon sight hereof, you, or some of you do cause to come before me, or some other of Her Majesties Justice of the Peace for the said County, the Persons hereunder named, to the end that they, and every of them may be bound to make their Personal Appearance at the next General Goal Delivery (or Quarter Sessions) to be holden for this County, then, and there to testify their and every of their Knowledges, concerning certain Felonious Acts committed by one C. D. now Prisoner in the *Marshall's* Prison in *Southwark*, the Common Goal for the County aforementioned, and hereof fail not at your Peril. Dated, &c.

*The Form of a Hue and Cry after a Robbery, &c.*

To all Constables and other Her Majesties Officers, as well within the County of *Warwick*, as elsewhere within the Realm of *England*.

Whereas Complaint hath been made unto me T. C. Esq; one of Her Majesties Justices of the Peace within the County of *Warwick*, by J. C. of D. &c. Grafier, that upon *Wednesday* Night last, being the 18th of *October* Instant, he was Robbed of one Hundred Pounds in Monies numbered, by two Foot padds on the Road, or *Queens Highway*, between D. and C. in the Day time, and hath cause of Suspicion of A. B. and C. B. two Lewd Rogues. Here describe their Persons and Apparel, setting down all such Marks as they may be known by. These are to require you, and every of

you to make search within your several Precincts for the said *A. B.* and *C. B.* And also to make Hue and Cry after them from Town to Town, and County to County, and that as well with Horsemen as Foot-men, and if you shall find them the said *A. B.* and *C. B.* both, or either of them, That then you carry the Party, or Parties so taken, before some one of the Justices of the Peace within the said County where he or they shall be taken, by him to be dealt with according to Law, &c.

And thus you may do, putting one, two, or more Names in, according as the Case requires, whether a Robbery on the High-way, or a Felony and Burglary committed in a House, or such like, in Barns, Stables, Out-houses, Stealing of Horses, or other Cattel, always describing the Parties in the Hue and Cry; so that they may be known, as also the things taken, that if the whole, or any part be found about them, or in their Possession, that may be known and brought as a Testimony against them upon Examination.

*The Form of a Warrant to Attach a Felon, or for Felony.*

*Effex.* To the Constables of *D.* &c.

Forasmuch as Complaint hath been made unto me by *W. W.* That of late he hath had certain Goods Feloniously taken from him, and that he hath in Suspicion one *L. C.* of your said Town. These are therefore to Will and Require you, and in Her Majesties Name straitly to Command you, and every of you, that immediately upon the Receipt hereof, you do Attach the Body of the said *L. C.* and thereupon to bring him before me to answer the Premises, and hereof fail not at your Peril. Dated, &c.

## C H A P. XX.

*A Warrant for the Overseers of the Poor to give up their Accompts.*

*Surrey.* To the High Constable of the Hundred of B. &c.

These are in Her Majesties Name, to Charge and Command you forthwith to give notice to the Church-wardens, and other Overseers of the Poor of every Parish within your Hundred, that they do personally appear before us at *Kingston upon Thames*, at the Sign of the *Swan*, on *Thursday* the 29<sup>th</sup> of *December* next coming, by 10 of the Clock in the Morning, or Forenoon of the same Day, to yield up, and make a true and perfect Accompt in Writing, Subscribed with their Names or Marks of all such Sums of Money, as they have Received, or Rated, and Assessed, and not Received, for, and towards the Relief of the several Poor of their several Parishes, and also of such Stook (to set the Poor on Work,) as is in their Hands, or in the Hands of any of the said Poor, and of all other things concerning the said Office, and hereof that they fail not at their, and every of their Perils. And further we require you, that you give warning to the Petty Constables of every Town, within your said Hundred, that they, or one of them, be also then present before us, to Inform and Certifie us of the Names of such other Persons as are meet and fitting to be Overseers of the Poor within their several Towns, for this Year next ensuing, and hereof fail not at your Peril.

☞ Note that this Warrant must be under the Hands and Seals of two Justices at the least, the one to be of the *Quorum*.

*The*



*The Form of a Warrant to the new Overseers to take their Charge.*

*Middlesex.* To the Overseers of D. &c.

By Virtue of a Statute made in the 43 Year of the Reign of our Sovereign Lady Queen Elizabeth (Entituled *An Act for the Relief of the Poor.*) These are to Will and require you whose Names are here Under-written, That you, together with the Church-wardens of your Parish, for the Time being, do (according to the Form of the same Statute,) take Order from Time to Time, for the Year to come, for the setting to Work the Poor within your Parish, and for raising a convenient Stock of some Wares or Stuffs in your Town, to that purpose, and providing necessary Relief for such as are Lane and Impotent amongst you, and for the placing Apprentices, such Children whose Parents are not able to maintain them: And hereof see that you fail not at your Peril. Dated, &c. Under the Hands and Seals of us, &c.

This Warrant must be under the Hands and Seals of two Iustices of the County.

*The Form of a Warrant to Distrain such as refuse to pay their Rates to the Poor, &c.*

To the Church-wardens and other Overseers of the Poor, within the Parish of K, and every of them.

*Warwick.* Forasmuch as we are Credible Informed, [or that it hath been duly proved before us] That the Persons here under-named, do refuse to Contribute, or pay the Summs of Money here undermentioned, set upon their Heads, being

## and their Clerks.

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being sessed and rated upon them severally, for, and towards the necessary Relief of the Poor of your said Town, according to the Form of the Statute in that behalf lately provided, These are therefore in Her Majesties Name, straitly to charge and command you and every of you, forthwith to require the said Persons so refusing, to be before us, to the cause of their said Refusal, and if they or any of them shall refuse to come before us, that then immediately you do Levy all and every the said several Sums of Money unpaid, and all Arrearages thereof, of all and every the said Persons so refusing, by Distress and Sale of the Offenders Goods, you rendring to the said Parties the Over-plus that shall remain upon the Sale of the said Goods, if any be; and this shall be a sufficient Warrant for your so doing. *Dated, &c.*

*Note, the Parties offending must be named here, &c.*

## C H A P. XXI.

### *The Form of a Warrant for suppressing an Ale-house.*

*Surrey. W. L. and C. L.* Two of Her Majesties Justices of Peace, within the said County of S. To the Constables of G. and either of them, Greeting. Whereas we are credibly informed, that *M. B.* of your Town, Victualler, is himself a Man of Evil Behaviour, and besides doth suffer Evil Rule and Disorder to be kept in his House, contrary to the Laws and Statutes of this Realm: These are therefore to will and command you, forthwith to repair to the House of the said *M. B.* and to charge him to surcease keeping any longer any Ale-house or Tipling-house, and from common selling of Ale or Beer at his Peril, and withall that you

you cause his Sign to be pulled down, and here-  
of fail not, as you and either of you will an-  
swer the contrary at your Peril. Given under  
our Hands and Seals at T. the ——— Day of  
——— and in the ——— Year of the Reign  
of our most gracious Sovereign Lady, Queen  
Anne, &c.

But it is usual with the Justices, e'er they  
grant this last Warrant, or a Warrant to Levy  
Monies forfeited by Ale-house Haunters, to  
send for the Offenders and Examine them of the  
Offence, that the Truth may be known, and that  
the Information be not upon the Account of  
Brangling or Malice between the Parties so in-  
formed against, and the Party Informing, but  
the Truth known upon plain Conviction. For-  
feitures in the latter Case may be Levied, upon  
refusal to pay, by Distress and Sale of Goods,  
and for want of such Distress the Offenders set in  
the Stocks, &c. See more in the Office of a Con-  
stable in this Book.


## C H A P. XXII.

*Supersedeas Grantable by Justices of the Peace to  
superseede Warrants, &c. their Forms.*

*The Form of a Supersedeas by a Justice of Peace.*

*Suffex.* R. D. Esquire, one of the Justices of  
Peace of our Sovereign Lady the Queen, within  
the County of *Suffex*, To the Sheriffs, Bailiffs,  
Constables, and other of the Faithful Mini-  
sters of our Sovereign Lady within the said  
County, and to every of them, sendeth Greet-  
ing. Forasmuch as L. T. of C. &c. Husbandman,  
hath personally come before me at D. &c. and  
hath

hath found sufficient Sureties, that is to say, *P. C.* and *R. B.* &c. Yeomen, either of which hath undertaken for the said *L. T.* under the pain of Twenty Pounds, and he the said *L. T.* hath undertaken for himself under the pain of Forty Pounds, that he the said *L. T.* shall well and truly keep the Peace towards our Sovereign Lady and all Her Liege People, and especially towards *R. M.* of *Etc.* Baker, and also that he shall personally appear before the Justices of the Peace of our said Sovereign Lady at the next General Sessions of the Peace to be holden for this County of *Suffex*: Therefore on the behalf of our said Sovereign Lady, I command you and every of you, that you utterly forbear to Arrest, Attach, Take, or Imprison, or otherwise by any means for the said Occasion to molest the said *L. T.* and if you have for the said occasion and no other, taken or imprisoned him, that then you do cause him to be delivered and set at Liberty without further Delay. Given at *D.* in the County aforesaid, under my Hand and Seal this 29th of *January*, &c.

 Note, a Superfedeas of this Nature is held good though the Sureties are not named, nor the Summ they are penally obliged in; yet it is better to express them both; for in such case if it shall appear the Sureties are not sufficiently Responsible, nor bound in sufficient Summs, better Sureties may be taken, and accordingly all the Superfedeas issuing out of the Court of Chancery, Queens-bench, and Common-pleas, do mention the Names of the Sureties, and the Summs they are obliged in for the Delinquents forth-coming to answer, &c.

And further note, that upon good Sureties

taken for the good Behaviour, a Superfedeas of good Behaviour may be granted, as for the Peace, *Mutatis mutandis*. Crompt. 237.

Also a Superfedeas *de capias indictmentum de Transgressionem*, and so of an Exigent may be granted by the Justices of Peace out of the Sessions; otherwise it would be Mischievous for the Party, not only by reason of his Imprisonment, but also that he may be outlawed before the Sessions, if so it were that the Justices of Peace might not take Sureties of him for his Appearance, and all is no more than to appear and answer to the Indictment.

And these, according to Crompton's Opinion, Cro. 234. may be granted by one Justice of the Peace, and with him agree the Books of Entries. However Lambert thinketh it not in the lawful power of any one Justice of Peace, to grant such Superfedeas at this Day, but that it must run in the Names of two Justices, one to be of the *Quorum*, Lamb. 508. However a great many Preidents run in the Name of one Justice of the Peace, which seemeth to be the ancient practice: Notwithstanding the joining of two Justices of the Peace herein, and one of them of the *Quorum*, is on all Hands concluded most Authentick, and so Dalton is of the Opinion it ought to be.

*The Form of a Superfedeas to deliver one out of Prison for Trespas, or the like.*

Wigorn. T. B. Armig. Unus Just. Dom. Reg. nunc  
ad Pacem in Com. Prad. Conservand. Constabul. Villa  
de S. nec non custodi Gaola dicti Dom. Reg. in  
Com. prad. Salutem Quia M. B. de C. Labourer ve-  
nit coram me Et invenit suffic. securitat. essendi co-  
ram Justic. dicti Dom. Reg. ad Proximam Genera-  
lem

lem Session. Pacis in Com. pradiſt. tenend. ad reſpon-  
dend. tam Domina Regina quam C. B. de quibusdam  
Transgreſ. ſeu Contemptibus, &c. per ipſum perpetr-  
tis, ideo vobis & cuilibet veſtrum, Mando, quod  
pradiſt. M. B. a custodia veſtra ſine dilatione delibe-  
rari faciatis, & alio mandato meo inde direct. inte-  
rim ſuperſedere; & hoc Mandatum meum erit vobis  
& cuilibet veſtrum Warrant. Datum apud V. tali  
die, &c.

Or you may begin it thus, ſs. T. B. Armig.  
Juſtic. Conſtabul. Ville de S. nec non, &c.

Superſedeas de Exig. Fac. de Felonia.

Ebor. Anna, &c. Vic. Com. Ebor. Salutem. Quia  
D. C. de B. in Com. tuo Piſtor. venit coram F. E.  
& invenit ſufficient. Manucaptor. eſſendi coram  
Custod. Pacis noſtra (ac Juſt. noſtris ad diverſas Fe-  
lon. &c.) ad General. Session. Pacis noſtra apud G.  
tali die tenend. ad reſpondend. nobis de quibusdam Fe-  
loniis unde indiſtatos eſt, Ideo tibi præcipimus quod  
do ulterius Exigent. præfat. D. C. ad aliqu. Comi-  
tat. tuum vel Imprisonand. ſive ipſum ea occaſione a-  
liquãliter moleſtand. omnino ſuperſed. & habeas ibi  
tunc hoc breve. Teſte W. M. apud L. tali Die &  
Anno. &c.

Superſedeas de capias pro ſine.

Cantab. I. B. Armiger unus Juſtic. Dom. Reg.  
tunc ad Pacem in com. pradiſt. Salutem Quia L. C.  
N. N. in diſt. com. Tonſor venit coram me & invenit  
ſufficient. Manucapt. eſſendi ad proximam Generalem  
Jeſſ. Pacis in Comit. pradiſt. tenend. ad faciend.  
Finem cum dicto Dom. Reg. pro quibusdam Trans-  
greſ. Contempt. & offenſis unde indiſtatus exiſtit. Ideo  
tibi præcipio. quod de capiend. præf. L. C. Impriso-  
nand. ſeu ipſam ea occaſione aliquãlit. moleſtand. omnino  
ſu-

*superfed. & habeas ibi tunc hoc praeceptum. Teste me, &c.*

There are other Superfedees's on several occasions; but finding these Forms, I thought good to set them down as a Light to further Matter of this Kind; and for a Treatise of them more at large, I refer you to *Dalton, Chap. 133. Crompt. 234.*

## C H A P. XXIII.

*The Forms of Recognizances on several occasions, to be taken by Justices of Peace, and written by them or their Clerks, &c.*

*The Form of a single Recognizance to be taken before a Justice of the Peace.*

Surrey. Memorand. quod — — die — — Anno Regni Dominae nostrae Annae Dei Gratia, Magnae Britanniae, Franciae, & Hiberniae Reginae, Fidei Defensoris, &c. Venerunt coram M. D. & W. C. Armiger. Justiciar. dicti Dominae Reginae ad Pacem in Com. S. conservand. Assignat. S. I. de B. in comitatu predict. Yeoman, & W. S. de eodem Textor ac D. R. de S. in comitat. predicti Sutor, & Recognover. se debere dicto Dominae Reginae, viz. quilibet Manucapt. predict. decem. Libr. & predict. S. I. in viginti Libr. bona & legalis Moneta Angliae solvend. eidem Dominae Reginae in Festo Purificationis Beatae Mariae Virginis proximo futur. pos. dat. present. & nisi fecerint concesserunt pro se Hared. Executor. & Administ. suis per presentes quod dicta separales summa levent. & recuperent. de Maneriis, Mesuagiis. Ter. Tenement. Bonis, Catallis & Hareditament. ipsor. S. I. W. S. & D. R. Hared. Execu-

tor.



tor. & Assign. suor. ubicunque fuerint invent. Dat.  
&c.

*The Form of a Recognizance for the Peace.*

Sufflex. Memorand. quod——Die——Anno  
Regni Domina nostri Anna, Dei Gratia, &c. P. P.  
de E. in com. pradiſt. Aurifaber, in propria persona  
sua venit coram me T. L. Armig. uno Justic. dicti  
Dom. Reg. ad pacem in dicto com. conservand. assign.  
& assumpsit pro seipso sub pœna Quinquaginta Libr.  
& W. I. de M. in com. prad. Yeoman & T. N. de  
&c. Agricultur. tunc & ibid. in propriis personis  
suis similiter vener. & manuceperunt pro pradiſt.  
P. P. viz. quilibet eor. separat. sub pœna vigint.  
quingu. lib. quod idem P. P. personalit. comparebit  
coram Justic. Dom. Reg. ad pacem ad prox. Genera-  
lem Sessionem pacis in com. pradiſt. tenend. ad faciend.  
& recipiend. quod ei per curiam tunc & ibid. injunge-  
tur & quod ipse interim pacem dict. Dom. custodiet.  
erga ipsam Dom. Reg. & cunct. populum suum præ-  
cipue versus N. M.——Yeoman, & quod damp-  
num vel malum aliqu. Corporale & gravamen Praſ.  
N. M. aut alicui de populo dict. Dom. Reg. quod in  
Lasionem aut Perturbationem pacis ipsius Dom. Reg.  
seu praſ. N. M. cedere valeant quovis modo non  
faciet nec fieri procurabit. Quam quidem sum. Quin-  
quaginta lib. pradiſt. P. P. & quilibet Manucapr.  
prad. pradiſt. separales summas viginti quinque Libr.  
se debere dict. Dom. Reg. de Terris & Tenementis bo-  
nis & catallis suis quorumlibet & cujuslibet eor. ad  
opus dict. Domina Regina Hared. & successor. suor.  
fieri & levari ad quarumcunque manus devenerit  
si contingerit ipsum P. P. præmissa vel eorum aliquid  
in aliquo infringere & inde Legitimo modo convinci.  
In cujus rei Testimon. ego pradiſt. T. L. sigillum me-  
um apposui. Dat. apud. &c.

Note

✎ Note here, if the Justice only subscribe his Name to the Recognizance, without putting his Seal, it may be well enough. And farther, that all Bonds, Obligations, and Recognizances that shall be taken by any Justice of the Peace, or any other Person, for any Cause touching the Queen, must be made and be taken in Her Name, and by these words, *Domina Regina, &c.* under a Penalty to him that takes them, as I have elsewhere said.

*The Forms of Conditions of Recognizances, to be set under the Recognizance, or Indorsed.*

*The Form a Condition to keep the Peace.*

The Condition of this Recognizance is such, that if the within bounden *H. H.* shall personally appear before the Justices of our said Sovereign Lady the Queen, at the next General Sessions for the Peace, to be held in the said County of *Suffex*, to answer to such matters as shall be objected against him, by *N. M.* within named, to do and receive what the Court shall then and there enjoin him; and that he do in the mean time keep the Peace of our said Sovereign Lady the Queen, towards the Queen's Majesty, and all her Liege People; and especially towards the said *N. M.* of *E.* aforesaid, Yeoman, that then this Recognizance to be void and of none effect, or else to be and remain in full Force and Virtue.

*The Form of a Condition, for one to appear before the Justices of Peace at their next Sessions.*

The Condition of this Recognizance is such, that

that if the within Bounden *W. A.* shall make his Personal Appearance before the Queens Majesties Justices of the Peace at the next Quarter-Sessions of the Peace, to be holden for the said County of *S.* then and there to make Answer unto such Matters, as on Her Majestys behalf shall be objected against him (by *W. A.* or concerning, &c.) [*and here shew the Matter shortly*] and shall also stand and abide such further Order as the said Court shall award, or set down therein, that then and from thenceforth this present Recognizance shall be frustrate and void, or else to remain in full Force and Virtue.

*The Form of a Condition for one that hath dangerously hurt another.*

The Condition of this Recognizance is such, that whereas the within bound *K. R.* hath now dangerously Hurt, or Wounded *L. G.* of *R.* within the said County of *S.* Butcher, giving him divers Blows, or Cuts on the Head, Face, &c. with a Chopper made of Iron and Steel, so as the said *L. G.* is in Danger of Death thereby. If therefore the said *K. R.* shall make his Personal Appearance before the Queens Majestys Justices at the next General Goal delivery to be held in the said County of *S.* then, and there to make Answer to the Premises, and to receive that which then shall be by the Court enjoined him, and that he the said *K. R.* in the mean time do keep the Peace of our said Sovereign Lady the Queen towards the Queens Majesty, and all Her Liege-people, that then, &c. as before.

## C H A P. XXIV.

*The Forms of Mittimus's to deliver Persons Committed to Goal, &c.*

*The Form of a Mittimus to send a Disorderly Servant, or other Disorderly Person to the House of Correction.*

*Berks.* I Have sent you herewithal the Body of *D. B.* of *R.* in the said County of *B.* being an Idle, Dissolute, and Disorderly Fellow, or one that will not keep his Service, nor follow an Honest Course of Life. These are therefore to Will and Require you to receive the said *D. B.* and him safely to keep till he shall be thence delivered by Warrant from my self, or some other Her Majesties Justices of the Peace for this County of *Berks*; and in the mean time to hold him to hard Labour, giving him the moderate Correction of the House, by Whipping, and otherwise according to Law in such Cases provided, and hereof fail not at your Peril. *Dated, &c.*


Note, that the Justice at his Discretion may Limit a time for his Imprisonment in the *Mittimus*, as two or three Days, and then to be Discharged, &c.

*The Form of a Mittimus of a Felon after his Examination taken.*

*Surrey.* *I. B.* Knight one of Her Majesties Justices for the County aforesaid, to the Keeper of Her Majesties Goal at the *Marshalsea* in the *Borough* of *Southwark*, in the County aforesaid, &c. Greeting, I send you herewith the Body of *B. A.*

late

late of G. Labourer, brought before me this present Day, and charged with the Felonious taking five Swine, (which he hath also confessed upon Examination before me.) And therefore these are on the Behalf of our said Sovereign Lady the Queen, to command you that you immediately receive the said B. A. and him safely keep in your said Goal, until that he shall be thence delivered by due Course of Law; Hereof fail not, as you will answer the Contempt at your Peril. Given at C. the \_\_\_\_\_ Day of \_\_\_\_\_ in the \_\_\_\_\_ Year of the Reign of our Sovereign Lady, &c.

 *Note*, here the Party Confessing the Felony on Examination, is held to Bar himself of being Bailed by the Justice, &c.

*The Form of a Mittimus upon Suspicion of Felony, &c.*

*Essex.* I. D. Esquire one of the Justices of the Peace for the County aforesaid, To the Keeper of Her Majesties Goal at Chelmsford in the said County, or to his Deputy there, Greeting, These are in Her Majestys Name to Charge, and Command you, and that you receive into your said Goal the Body of B. K. late of D. Mariner, taken by L. C. Constable of the Town of C. and by him brought before me for Suspicion of Felony, &c. and that you safely keep the said B. K. in your said Goal, until the next General Goal-delivery for the said County, [if he be not Bailable, or if Bailable, then thus] until he shall be thence delivered by due Course of Law. And hereof fail not, as you will answer the Contempt at your Peril, &c.

*The Form of a Mittimus to send the Reputed Father  
of a Bastard child to Goal.*

*Warwick.* I send you herewithall the Body of  
C. R. of B. in the County of W. Labourer,  
brought before me this present Day, and Char-  
ged by S. J. of the same Town, to have gotten  
her with Child, and for that the said C. R. re-  
fuseth to put in Security for his Appearance at the  
next Quarter-Sessions, and to the end he may be  
forth coming, when as Order shall be taken for  
the Relief and Discharge of the said Town of B.  
and for the keeping of the said Child (when  
it shall happen to be Born) according to the  
Statute in that Case made and provided. These  
are therefore on Her Majesties behalf, to Charge  
and Command you, that you immediately re-  
ceive the said C. R. and him safely keep in your  
said Goal, until such time as he shall be from  
thence delivered by due Order of Law, and here-  
of fail not, as you will Answer your Contempt  
at your Peril. Dated, &c.

Note that in every *Mittimus*, the cause of  
the Commitment is to be set down, to the end  
that it may appear, and be made known whether  
the Prisoner beailable or not, and the *Mittimus*  
must be directed to the Goal-keeper or his  
Deputy.

Also where the Justices of the Peace out of  
their Sessions may hear and determine, and so  
may Commit Offenders for the Offences, or Fine,  
it is necessary that in their *Mittimus* there be  
contained the Manner of the Offence, and how  
long time the Prisoner is to be kept in Prison for  
it, and after this manner, with varying the  
Names of Places, and Persons, as it shall happen  
on the Occasion, and some other Variations in  
point

point of Fact, &c. These may direct a Clerk to make others, &c. And *Mitrima's* may be directed thus, sc. To the Keeper of Her Majesties Goal of N. and to the Deputy, or Deputies there, and every of them. And in case one be Committed for a Fact, where the Statute appoints the Fine upon the Parties being Convicted before a Justice of the Peace, by Witness, or his own Confession, the Fact must be at large set down, as also the Penalty or Summ, and then it must be to continue him till he pays the Money therein mentioned, as in Case of unlawful Fishing, Hunting, Shooting of Conies, Pidgeons, or the like with Hand-Gun, &c.

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#### C H A P. XXIV.

*The Form of Bailment by the Justices of the Peace, &c.*

*The Form of the Liberate, to deliver a Prisoner Committed for Felony.*

*Rutland.* **A**. D. and C. D Esquires, two of Her Majesties Justices of the Peace, to the Keeper, &c. of Her Majesties Goal in the County aforesaid, Greeting, Forasmuch as G. F. &c. Labourer, hath before us found sufficient Main-prize, to appear before the Justices of the Goal-Delivery at the next General Goal-delivery, to be holden in the said County, there to answer to such things as shall be then and there on the behalf of our said Sovereign Lady the Queen, objected against him, and namely to the Felonious taking five Geese, for the Suspicion whereof he was taken and Committed to your said Goal.



We Command you on the Behalf of our Sovereign Lady, that if the said G. F. do remain in your said Goal for the said Cause, and for none other, Then to forbear to Grieve or Detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon pain that will fall thereon. Given under our Hands and Seals this, &c.

*The Form of another Bailment, where the Goaler can conveniently bring the Prisoner before the Justices.*

*Cantabr. Memorandum quod Decimo die Movembris, &c. L. C. de G. &c. W. W. de M.. &c. Venerunt coram nobis S. T. & P. T. Militibus duobus Justic. Dom. Reg. ad Pacem Com. pradiſt. conservand. Assignat. apud H. in Com. pradiſt. & Manucep pro G. L. de &c. utrumque eorum sub pena viginti Libra, &c. & pradiſt. G. L. nunc & ibidem similiter Assumit sub pena Quadraginta Librar. consimilis Moneta Anglia de Bonis & Catellis & Tenement. eorum & cujuslibet eorum ad opus & usum dicti Dom. Reg. Hared. & Successor suorum fieri & levari si prafat. L. C. defecerit in condicione indorsata.*

The Condition of this Recognizance is such, that if the within Bounden L. C. shall make his Personal Appearance before the Queens Majesties Justices of the Peace at the next general Sessions to be holden for this County, then and there to make Answer to our Sovereign Lady the Queen, for and concerning the Suspicion of Stealing five Sheep, whereof he standeth charged, then this Obligation to be void and of none Effect, or else to be and remain in full Force and Virtue, &c.

*A Warrant to deliver a Servant out of a Goal.*

Suffex. F. B. Armiger unus Justic. Dom. Reg.  
&c. Custodi Gaolæ dicti Dom. Reg. in com. prædict.  
Salutem quia C. W. de R. Labourer coram me  
invenit sufficient. Securitatis. essendi coram Justic.  
dicti Dom. Reg. ad pacem in com. prædict. conservand.  
&c. ad proximam Generalem Sessionem patris in  
com. prædict. tenend. ad respondend. tam dicto Dom.  
Reg. quam D. C. de N. de Transgres. Et contemptu  
suis contra formam Stat. de servientibus nuper edit.  
Et provis. ideo tibi ex parte dicti. Dom. Reg. mando  
quod prædict. C. W. à Prisona tua si ea occasione Et  
non alii ibid. deteneatur, sine dilatione delib. fac.  
Dat. &c.

Note, wheresoever a Justice of the Peace  
upon his own Motion or Discretion, hath  
committed a Party to the common Goal, or any  
other Goal or House of Correction, for want  
of Sureties for the Peace, good Behaviour, or  
for being a vagrant or idle Person or such  
like, it seemeth the same Justice in like discre-  
tion may afterwards discharge him again, and  
make his Liberate or Warrant to deliver such  
Prisoner, &c. vide 14 Hen. 6. Folio 8. Tit.  
Impris. 27.

*The Form of a Bailment for the Peace, the Party  
being in Prison.*

Memorand. &c. B. A. de C. C. D. de L. Et  
L. Et L. C. de M. venerunt coram me G. W. &c.  
Et manucaverunt pro R. B. de L. quod ipse pacem  
geret erga cunctum Populum Dom. Reg. Et præ-  
cipue erga S. I. sub pœna cujuscunque manucaptor. vi-  
ginti Librar. Et quod prædict. R. B. comparebit co-  
ram Justic. Dom. Reg. ad proximam Generalem

*Sessioem Pacis pro Com. pradiſt. tenend. apud L. in Com. pradiſt. &c. Dat.*

## C H A P. XXV.

*The Form of Releases by Juſtices of the Peace, &c.*

*The Forms of the Release of a Juſtice of the Peace.*

**E**GO praſat. L. D. qui ſupra nominatum A. B. ad prad. Securitat. Pacis inveniend. ex mea Diſcretionē compuli eandem ſecuritat. Pacis quantum in me eſt ex mea Diſcretionē primo die Decembris &c. remiſi & relaxavi. In cujus rei Teſtimon. haec praſenti relaxationi mea ſigillum meum appoſui. Dat. Die & Anno ſuperadiſtis.

*The Form of the Release of a Party before the ſame Juſtice that took it.*

Ebor. Memorand. quod Decimo Die Novembris &c. praſat. L. K. venit coram me R. G. & Gratu veniſit & relaxavit quantum in ſe eſt pradiſt. ſecuritat. pacis per ipſum coram me verſus ſupra nominatum B. A. petitam. In cujus rei Teſtimon. ego praſat. R. G. ſigillum meum appoſui. Dat. &c.

& Note that theſe two Releases are to be written under the Recognizance it ſelf; and if the Juſtice ſhall only Subscribe his Name without his Seal, it is ſufficient; eſpecially where the Recognizance is not Sealed. Or the Release of the Party may be by it ſelf, in this Form.

Cantab. Memorand. quod D. C. de S. in com. pradiſt. Yeoman, Vicesimo Die Decembris, Anno Reg. Dam. noſtri &c. venit coram me B. I. Armig. uno Juſtic.

## A Help to Grand; &c.

*Justic. dicti Dom. Reg. ad Pacem in Com. prædict. conservand. assign. apud W. in com. præd. Et ibi remisit Et gratis relaxavit W. L. de S. in com. præd. Labourer Securitatem pacis per ipsum D. C. versus dictum W. L. coram me petitam. Dat. Die Et Anno supradictis.*

And if the Release be made before another Justice who took not, or hath not the Recognizance, it may be thus.

*Memorand. quod D. C. de S. in com. prædict. Yeoman, Viceffimo Die Decembris, venit coram me D. N. Armig. uno Justic. dicti Dom. Reg. ad Pacem in com. præd. conservand. assign. apud S. in com. prædict. Et Securitatem Pacis quam habet versus I. D. de V. &c. penitus remisit Et relaxavit. Dat. Die Et Anno supradictis.*

Note that none of these Releases will discharge the Recognizance, or Appearance of the Party Bound thereby; but that he must appear according to the Condition of the Recognizance for the Safe-guard of his said Recognizance.

Brief Directions, or Helps to Gentlemen of the Grand and Petty Juries, whereby those that are not used to be on Juries, may inform them in many Material Things, concerning the Weighty Trust reposed on them in discharge of their Duty.

## C H A P. XXVI.

*Somewhat of the Antiquity of Juries. What things they must consider, and how they ought to be Qualified to be Furors.*

**I**N this useful Book promising to say somewhat of Grand and Petty Juries, to give those

an Insight into what they ought to know, who take so great a Trust upon them when sworn Jurors to enquire, &c.

The Tryal by Juries is very ancient in this Kingdom, and it is our Happiness above other Nations, that a Man has so great a Benefit to be Tryed by his Equals: Men unprejudiced and unbyassed to deliberate upon Hearing the Evidence, and Weighing in their Consciences the Merit of the Cause. This way in some degree was not unknown to the ancient *Britains*, as by some of their Books and Monuments of Antiquity appears: and we find it practised by the *Saxons*, as Mr. *Lambert* makes Remarks in *King Ethelred's Laws*, Page 118. and *Cook* 1 part *Institutes* Folio 155. and since more amply confirmed after the *Norman Conquest* by *Magna Charta*, every Day growing more and more in Esteem, because no Mans Life, unless it be in Parliament, which is a supreme Court, and is supposed will never do any Man wrong, shall be touched for any Crime whatsoever, but upon being found Guilty on two several Tryals, for so may that of the Grand and Petty Jury be rightly termed, and the Judgment of twice Twelve Men at least, all of his own Condition, viz. 12, or more to find the Bill against him, and 12 more to find him Guilty, or Acquit him on the General Issue: All which Jurors ought to be Substantial, Honest, and Impartial Men, being Neighbours of the Party Accused, or supposed place where the Fact was committed.

A Jury in this Case upon hearing the Evidence, must be fully satisfied in their Consciences, that the Party is guilty, and so unanimously pronounce him upon their Oaths, or  
else

else he may not be condemned, for the Office  
 and Power of these Juries are Judicial; from  
 whose Sentence the Indictment is to be valid  
 or invalid, or to speak plainer, the Party In-  
 dicted to be found Guilty or Acquitted, for from  
 their Verdict there lies no Appeal. As for the  
 Qualifications of such as are to be upon Juries,  
 the Law has provided that they shall be Persons  
 of Honesty, Ability, Integrity and Indifferency;  
 and Cooke in the first part of his Institutes, Sect.  
 234. Folio 155. says, that a Juror must be *Liber  
 Homo*, not only a Freeman, not Bound, but  
 one that has such Freedom of Mind, that he  
 stands indifferent Sworn, as he stands unsworn:  
 That he must be *Legalis*, Lawful, and by the Law  
 these Properties are required in a Juror. 1. He  
 ought to have his dwelling most near to the  
 place where the Question does arise; or is mo-  
 ved. 2. He must be most sufficient both in  
 competency of Estate and Understanding. 3. He  
 ought to be least suspicious, viz. be indifferent  
 as he stands unsworn, and then He is ac-  
 counted *Liber & Legalis Homo*, otherways it is  
 held he may be Challenged and not Sworn;  
 for the Prisoner may challenge 35 in case of  
 Treason, and 20 in Case of Felony; with-  
 out shewing Cause; and as many more as he  
 can assign just Cause against. In brief, Jurors  
 must be free from all manner of Bondage, Oblie-  
 gations, Affections, Relations, and Prejudices;  
 they must be the Peers, or Equals of the Party  
 they are to Try, and of the full Age of One  
 and Twenty, or upwards.

They were Anciently all Knights, as you may  
 find it in *Glanvil* and *Bracton*, and still must  
 be Men of Worth and Good Repute; and  
 as they are returned by Sworn Officers or the

Sheriff, so they of the Petty Jury are to be Sworn severally on every Tryal, the better to mind them of their Oath, or they to be charged upon their Oath with each Party they are to Try.

## CHAP. XXVII.

*Of Indictments, Presentments, and the difference between them; the Oath administred to the Grand Jury, and how they ought to enquire, &c.*

**T**Hough both of them, as I have said are *Juries*, yet there is made a small distinction between them in the Title, as *Grand* and *Petty Juries*: The first is so called, as it seems, because it usually consists of a greater Number than the other, as 17, 19, 21. or the like, yet they can make no Verdict, or Presentment, unless Twelve of them at the least agree, and then, though the rest consent not, it is held sufficient. And they are further so called, because they generally are of the greater quality; and likewise in regard of their Power, because their Office is more Great and General, extending to all Offences throughout the whole County for which they serve as Jurors.

The *Petty Jury*, commonly called the *Jury of Life and Death*, consisting of 12 Men, are all to agree in a Verdict, or the Verdict cannot be taken, and is no Verdict.

The *Grand Jury*, or *Grand Inquest*, for so they are often called, have principally two things in their Consideration, viz. Indictments, and Presentments; Indictments are those that are usually drawn up in Form at the instance of the Prosecutor, or by the Order of the Courts,

and



and then brought before, and delivered unto the Grand Jury, and the Witnesses Sworn attend them, to be Examined by them upon the Oath they have taken; and according as they Credit, or Discredit the Evidence, or find Cause, they Indorse the Indictment, *Billa vera*, or *Ignoramus*, it is a true Bill, or we are ignorant; the latter concluding the Jury does not find the Matter, or there does not upon Evidence appear a sufficient Ground for the Accusation, that the Party's Life or Reputation should be brought into Question or Dispute.

As for a Presentment, it is when of their own Knowledge, or upon Enquiry, the Jury themselves do take Knowledge of a Nuisance, or Offence to the Injury of the Publick, which they think fit to have removed, or punished, and of which they inform the Court to that purpose, briefly in Writing without Form, viz. The Nature of such Offence, or Thing, and the Persons Name and place, who is the Agriever, or where the Nuisance is, being a Ground and Matter whereon to Form an Indictment, the Presentment differing from the Indictment in two Particulars, viz. Its not being drawn up in due Form; and whereas the Indictment is commonly drawn up by the Order of the Court, or the Instance of some Prosecutor as is said.

The Presentment on the other Hand, is always Originally the Act of the Grand Jury.

*The Form of the Oath Administred by the Court to the Grand Jury, when they are to Enquire, &c.*

You shall diligently enquire, and true Presentment make of all such Matters, Articles, and Things as shall be given you in Charge, as well as of all other Matters and things as shall come

to your Knowledge, touching this present Service. The King's Council, your Fellows, and your own you shall keep secret; you shall Present no Person for Hatred or Malice, neither shall you leave any one unpresented, for Fear, Favour or Affection, for Lucre or Gain, or any Hopes thereof; but in all things you shall present the Truth, and nothing but the Truth, to the best of your Knowledge. *So help you GOD.*

And now from what has been said, it appears that this important Office is Branched two-fold; The first is to preserve the Innocent from the Disgrace and Hazards, which by Malice, or any finister Means they may be brought into; for by the express Words of the Statute of 25 *Edward the Third, c. 3.* and the 43 *Edward 3. c. 3.* it is said, That for preventing Mischiefs done by false Accusers, none shall be put to Answer, unless it be by Indictment, or Presentment of Good and Lawful People of the same Neighbourhood, where such Deeds be done, and this no doubt may be taken to imply a Grand Jury.

The other Branch is to inquire after, and give Notices of all Nuisances, Offences, Crimes and the like, in the County for which they serve, that so Offenders may be brought to Tryal, if they are forth coming, or if fled from Justice, may be proceeded against upon the Outlawry, and so Criminals punished according to their Demerit.

A Grand-Jury, or Petty-Jury, where there is no Witness against the Prisoner for the Crime he stands Indicted for, yet knowing him Guilty of their own knowledge, may find it accordingly; and this especially in the Petty-Jury appears pretty plain by the Words spoken to them by the Court; for if no Witness appears, the Court thus speaks to the Jury, or to this Effect. Gentlemen of the Jury, here is *L. C.* stands Indicted of such a Crime, (naming

ming it) and there is no Witness come against him. So unless you of your own Knowledge know him Guilty, you must Acquit him. But where there is Evidence, the Grand Jury must Industriously Examine the Evidence for the Queen, and the Petty-Jury must have the Prosecutor and his Evidence, if he have any beside, Face to Face with the Prisoner, and patiently hear what can be Alledged in charging the one, and the others defending himself, and deliberately weigh the Matter, and may pray the Court to ask such proper Questions of the Queen's Evidence, and of the Prisoner, and his Evidence, as they think fit for their better Satisfaction, and sifting out the Truth of the Matter, and to Judge of Matter of Fact according to their Evidence, as in their Consciences they shall believe; and where a thing is doubtful to them that they cannot well determine, they may find it Special, and leave it to the Determination of the Judges, and so acquit themselves where such Doubts or Scruples shall arise, of falling into an Error in point of Law, of which the Jurors are not held proper Judges; but where it so requires, must leave it Special.

And thus having spoken mostly to Generals, I now come nearer to particulars, which may briefly give a further Light into these weighty Matters, that Men warned upon a Jury, and Empannelled, may be prepared a little to know what is Requisite in so great a Charge and Trust.

*Several Material Things to be known relating to Juries, as the Law directs, and according to the Opinion of the Learned Lawyers.*

**J**URIES both for Enquiry and Trial, ought to be *Probi & Legalis Homines*, Lamb. 396.

Jurors must be Inhabitants, or Free-Holders within the County, to the value of 4 *l. per Annum*, by 27 *Eliz.* 6. But in Cities and Burroughs to the value of 40 *l.* in Goods, Lamb. 396, 397.

A Juror 70 Years Old, or Decrepid, must serve, if returned by the Sheriff, if the Justices will have him to serve, but he may, if he will, Sue the Sheriff upon the Statute of *Westminster*, 2 *Chap.* 38. Lamb. 307.

A Jury of *Denizens* is good, where a Party is *Extraneus*, unless he pray a Jury, *per mediatem Lingua*, 3 *Cro.* 869.

Where a Baron is Sued, a Knight must be returned on the Jury, *ibid.*

Jurors for the Trial of Indictments within the County *Palatine* of *Lancaster*, must have five Pounds *per Annum*, *ibid.*

Jurors must not be nominated by any but the Bailiffs, as well in Inquisitions before Coroner, as Indictments before the Justices of Peace, 1 *Cro.* 134.

Jurors Exempted by Charter, with the Words (*Licet Tangat nos*) are to be Discharged upon Appearance, shewing it to the Sheriff; but when there is want of sufficient Jurors, no Exemption can discharge, *Stat. West.* 2. *Chap.* 38. Lamb. 197.

If

If the particular Juries for the Hundred cannot be supplied by those of the Hundred, it is better to take *Tales de Circumstantibus* of another Hundred, than to be renewed with a *Tales* from one Sessions to another, *Lamb.* 398.

A Jury of one Hundred may present an Offence done in another Hundred, *Lamb.* 399.

Justices may command the Sheriff to alter the Panel, and he upon Refusal forfeits 20 *l.* *ibid.* 3 *Hen.* 8. *Chap.* 12.

All Jurors ought, and must be Sworn, otherwise their Presentments are void; but the Record being that all the Jurors were Sworn, the Presentments are good, though all be not Sworn, *Lamb.* 399.

Jurors may be Amerc'd for refusing to present being Sworn, 8 *Co.* 39. *A.*

A Juror after he is Sworn, upon sufficient Cause appearing, may by the Justices be removed. *Lamb.* 400.

Jurors of Enquiry must be twelve, as I have already said, but they may be more, and usually they are an odd Number, tho' 12 of them Agreeing, the Presentment is good, and an Indictment may be found, *Lamb.* 400.

Juries of Enquiry ought not to be Committed to a Keeper, nor kept without Victuals, nor carried out of the Town, but may be Adjourned to another Place, to give up their Verdict. *Lamb.* 400.

Jurors willfully concealing Offences Presentable, and which be complained of by Bill, may be enquired of by Persons, whereof every one may spend Forty Shillings *per Annum*, and such Concealment being found within a Year after, every Juror shall be Amerced in open Sessions, 3 *Hen.* 7. *Cap.* 1. *Lamb.* 400, 401.

No Juror to be returned without an Addition whereby he may be known, 27 Eliz. Chap. 7. Lamb. 432.

Jurors that discover what they have done, are Fineable, Lamb. 402. And in Case of Treason or Felony, it hath been Adjudged Felony, Dalton 377.

Jurors taking any thing to make a favourable Presentment, shall be Imprisoned, and Ransomed, Lamb. 441. Cromp. 84. A. 5. Edw. 3. Chap. 10.

1. Persons Attainted in Conspiracy. 2. Attaint by Verdict. 3. *Decies tantum*. 4. Concealment. 5. Subornation of Perjury; these on a Jury are not *Probi*, and their Presentments void, unless there be twelve Men besides on the Jury, whose Reputations are not blemished, Lamb. 396. Also Persons Outlawed, Persons Condemned in Premunire, Persons Abjured, Persons Attainted of Treason, or Felony, and Clergy-Men, are not to be of Juries.

### C-H A P. XXIX.

*Challenges to be made of Jurors, and other very useful Instructions tending to Evidence, &c.*

SO Tender were our Ancestors of the Lives and Fortunes of Men, that in making wholesome Laws they took great care, that nothing, as near as Human Wisdom could foresee, should happen to the prejudice of the Innocent, the Laws being only intended and made, rather to deter Men from Crimes, than to punish those who Transgressed the Bounds of them; and because

prejudice, nor no other thing might sway any Party to Injure a Person Indicted, if on his Jury he has, as I have already hinted, the Priviledge of challenging such as he suspects, to a certain number formerly mentioned, premptorily, and more, if he can shew lawful and just Cause, for the Parties better Instruction.

*Note*, if a Peer of the Realm be returned on a Jury, he may be challenged by either Party, or he may challenge himself, 1 *Inst.* 156.

The Array may be challenged where a Peer is Party, and no Knight returned on the Jury. *Ibid.* But in Case of a Noble-mans being put upon his Trial by his Peers, he cannot challenge any of them, they being to Try the Cause on Honour.

One Indicted of Felony may challenge as many as he will, shewing Cause: but if he can Assign no cause for such Challenges, over and above 20, he can Challenge no more than that twenty, 22 *Hen. 8. Chap. 14.* 22 *Hen. 8. Chap. 1.* *Lamb.* 554.

*What is properly a good Challenge.*

1. Where the Party hath no Lands to the clear value of 40 s. by the Year, *Lamb.* 554.

2. He that was Indicter of him, *Lamb.* *ibid.*

3. A Party either in City, or Burrough, that hath not goods to the value of 40 l. *Lamb.* *ibid.*

3. He that is not *Probus & Legalis*, as if he be Attainted of Forgery, Perjury, Felony, &c. *Lamb.* *ibid.*

5. In Case of Champerty, which is when a Party for Hope of having part of the Thing in Contest or Variance, moveth, or causeth the Suit to be moved at his own Cost, and which is Fineable, and for it he is to be Fined, 33 *Edw. 1.*

*Chap.*



*Chap. 1. Lamb. 441.* and in some other Cases, So that the Law of *England* may be said to be the Law of Liberty; because the Party to be Tried has all the Liberty the Nature of the Thing will bear, or a Person under Circumstances, reasonably desire; the Law it self that directs this, seeming to Compassionate Mens Miseries or Misfortunes, as well in Criminal Matters, as in securing their Rights and Properties, Skreening them as it were from powerful Men, that else would Oppress and Ruin them.

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### C H A P. XXXI.

#### *Of Attaint and Inquest.*

**I**N this matter none shall be Sworn or Summoned upon the Inquest in any Court within the City of *London*, except he have Lands or Goods of the value of forty Marks; or for Land or Action Personal, where the Debt and Damages exceed forty Marks; if he hath not Lands and Goods to the value of 100 Marks, the Party to have avail thereof, by way of Challenge, and such Persons impanelled to forfeit 12 *d.* In Issues, and so to double, &c.

And that upon a false Verdict their Attaint shall be by Bill in the *Hustings*, and the form how they shall proceed, and who shall be Judges, and that the Trial shall be there and not elsewhere, and that none of the Grand or Petty Jury shall be punished otherwise than is limited by the Statute; That every of them shall forfeit 20 *l.* and be Imprisoned by the space of six Months, and that upon the Affirmance of the first Verdict, they may inquire if any of the Jury took Rewards, &c. and that he loses *Decies tantum*, and

and to be Imprisoned and Disabled to be Sworn a Juror, and an Action of Debt is given for the Plaintiff in the Attaint, who hath lost his Debt or Damages, to sue where he will, and if the Plaintiff be nonsuited in Attaint, that he shall be Imprisoned and shall be Fined, and Party Inquests shall be in Attaint where one of the Parties is a Stranger, *Stat. 11. Hen. 7. Chap. 21. Attain 13.*

*Note,* That in Attain in London, he who is worth 100 Marks shall be a sufficient Juror without Challenge upon the Statute of 23 *Hen. 8.* and that the Justices shall sit at the *Guild-Hall*, or other convenient place within the City, to swear the Jury and to take the Verdict, and that London shall not be compelled to sue Attaints but within the City, *Stat. 37. Hen. 8. cap. 5.*

A Challenge that the Party hath nothing within the Ward shall be void, *Stat. 7. Hen. 7. cap. 4.*

The Sheriffs of London may return Pannels in the Exchequer, of Citizens having Goods of the value of 100 Marks, to be Tried at *St. Martins* by *Nisi Prius*, and if it be before any Justice otherwise to be Tried, then they may return Jurors according to the usage, without forfeiture, 5 *Hen. 8. Cap. 35. Jurors, 14, 15.* All Persons within Cities or Burroughs worth 40 *l.* shall be admitted Jurors in Trials of Murther and Felonies in every Sessions and Goal Delivery, to be holden in and for the Liberty. *Proviso,* that it do not extend to any Knight or Esquire, who dwells there, 23 *Hen. 8. Juror. 16.*

*Oyer and Terminer* shall be of all Felonies throughout the Realm, without prejudice to the Franchises and Liberries, and to the five Ports, but they to enjoy their Liberties as before, 2 *E. 3. cap. 7. Oyer 3.*

*How to sue a Person to an Outlawry in the Common Pleas, &c.*

**T**HIS is the common course of suing to an Outlawry, where the Person absconds and cannot to be Arrested upon mean Process, and this Outlawry cannot be perfected under three Terms, as thus, if you would begin in *Easter Vacation* to sue a Bond, you must be careful to take the benefit of the foregoing Term, or it cannot be finished by *Michaelmas Term* next ensuing; but proceed thus, the Original returnable *Quindena Pasche*, the *Cap teste Quindena Pascheret Quinque Pasche*, *Alias capias Teste quinque Pasc. ret. Crastin. Trin. Pluries capias Teste Crastin. Trin. ret. tres Trin.* and the Exigent and Proclamation returnable in *Mense Michaelis*, both of the same Teste and Return; so observe between the Teste and the Return of each Writ, is always fully fifteen Days or more, and the Return of the first Writ is the Teste of the second, and so in order.

When you have returned a *Nihil* upon the Original, then you must carry it to the Philizer of London to File, who makes a *Capias*, and an *Alias Capias*, whereupon return *Non est Inventus* your self of course, and carry them back again under Seal to the Philizer, who will thereupon make a *Plures capias*, which also return *Non est Inventus*, and carry it under Seal to the Exigenter, London, who will make thereupon an Exigent, and Proclamation; which Proclamation give or send to the Sheriff of the County where the Defendant Lives, any where within *England* or *Wales*, for no County Palatine or Liberty forever, can

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privilege from the process of an Outlawry, and carry the Exigent to one of the Compters in London, where Clerks attend for that purpose, who Proclaim them upon five Hustings Days, and the Party not appearing by the *Quint Exactus* is returned Outlawed; and indeed laying the Action in London, you may sue to the Outlawry sooner than in the County, for the Hustings Days are oftner than the County Court Days, but if the Defendant appear upon the return of the Exigent, he shall not be compelled to put in special Bail, be the Debt never so great; but if he stays till he is Outlawed, he must Reverse it, and put in special Bail if the Debt be above 20 l.

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C H A P. XXXIII.

*The manner how to Reverse an Outlawry.*

IF a Man be sued to an Exigent, and do not appear at the return of it by *Superseas*, you must call for a return of the Exigent, and of the Proclamation, which when you have returned the Defendant Outlawed, carry the Exigent so returned to the Outlawry Office, and the Clerk of the Outlawry will File it, and make you out either a General *capias ut legatum* against the Body only, or a special Writ against Body and Goods, by which means the Defendant is disabled to sue or take the benefit of the Law against any Man so long as he remains Outlawed, therefore to relieve himself he must reverse the Outlawry and put in special Bail, if the Debt be above 20 l.

To Reverse an Outlawry in the Court of Common Pleas, in the first place get a Copy of the Exigent, and to do this get a Note at the Outlawry

lawry Office how to find it at the *Custos Brevium*, and having got a Copy of it, carefully note, whether there be any Errors in it, as the insufficient return of the Exigent. If there be any insignificant word therein, or any material word omitted or want of Form, or a word therein not truly written in the Dashes, or for want of a Proclamation; all these are good causes of Reversals, and if you find an Error, go to the *Custos Brevium*, and bespeak the bundle of Writs to be brought in Court the next Day, and there shew to the Secondary or Prothonotary the Error upon the Exigent, which is shewed to one of the Judges in Court, and after the Prothonotary takes a Note of the Error, and makes a Certificate to the Outlawry Office of the Reversal; which Certificate being brought to the Clerk of the Outlawries, he marks the Outlawry Book discharged, and then is the Reversal drawn up in Paper, and entered upon the Roll. and then the Defendant is restored in *Statu quo prius*, but when this is done, it must be before the Body or Goods, or Lands, &c. are seized by a *Capias ut legatum*.

There is yet another way of Reversing an Outlawry, by Writ of Error, if the Defendants Body or Goods be taken upon the *Capias ut legatum* in the Vacation time, by the Plaintiffs Attorney going to the Clerk of the Errors; and if the Debt be above 20*l.* he must put in special Bail, or the Attorney must undertake there shall be Bail put in for the Defendants Discharge, which being done, the Clerk of the Errors will make out a Superseas to the Sheriff; whereupon he is to discharge both the Party and his Goods if taken, if not, he is to forbear; but if a Man be Outlawed after Judgment, then this kind of Re-

versal

verfal will not be allowed for an Outlawry after Judgment till the Plaintiff hath acknowledged fatisfaction upon Record, or the Defendant hath payed the Money into Court.

## C H A P. XXXIV.

*How by Habeas Corpus to remove a Prisoner out of any inferiour Prison to the Fleet, &c. or the Cause out of any inferiour Court into the Common Pleas, &c.*

**I**F a Person be Prisoner in the Country, and you would remove him to the Fleet, if there be no Cause depending against him in the Common Pleas, and you would remove him; the way is either to charge him with an Attachment of Priviledge at an Attornies Suit, or a *Capias* at the Suit of any Friend; and then bring a Writ of *Habeas Corpus cum Causa*, and then the Cause in the Common Pleas being returned amongst other Causes, the Prisoner with his Cause will be turned over to the Fleet.

But if you would remove any Cause out of any inferiour Court or Corporation, if the Debt or Damages exceed five Pounds, you must get a Writ of *Habeas Corpus cum Causa*, directed to the Court where the Action depends, which if it be in or about London, it must be returnable immediately at the Judges Chamber, but if in the Country then at a Day certain in Term-time, and upon the Removal the Defendant must put in special Bail before a Judge, or for want thereof, the Plaintiff may get a *Procedendo*, and bring it down again, and so Try it below. And in the like manner you may remove out of the Country, or any inferiour Court, to the Queens Bench by *Habeas Corpus*.

C H A P.

*Penalties upon Forestallers of Markets, Fairs, &c. Badgers, Drovers, Butchers, Tanners, Inholders, what they may do in some Cases, and what they ought not to do, &c.*

**T**Here are several good Laws made to hinder Abuses in one Mans intrenching on another, and Ingrossing Commodities to himself, in hinderance of the Trade of others, and making the Commodity dear, &c. Of which, and other things necessary to be known, I shall Treat in this Chapter.

A Forestaller is a Party, either he or she who Buys or Contracts for any Victuals, or Wares before they come to the Fair, Market, or Port, or moveth any Party to Enhance the Price, and not to bring such Victuals, or Wares to any Market, Fair, or Port, *Lamb. 450.* Of which the Party being Convicted before the Justices of the Peace at the Quarter-Sessions, by the Examination of two Witnesses, or a Presentment of Forestalling within two Years, for the Offence the first time shall lose the Goods, and be Imprisoned two Months without Bail or Main-prize; for the second Offence, lose double the value of the Goods, and be Imprisoned for the space of six Months; for the third Offence, to forfeit all their Goods, stand in the Pillory, and be Imprisoned during the Queens pleasure, *5 Edw. 6. Chap. 14. Dalt. 87. Lamb. 570.*

The Moiety of these Forfeitures upon Forestalling, due unto the Party informing upon the Statute of Forestallers, is to be Levied by *Vieri Facias*,

or



or *Capias*, to be Awarded by the Justices of the Peace, *Lamb.* 548.

A Man or Woman buying Corn for Seed, and not bringing so much to the Market, Forfeits double the Value, 5 *Edw.* 6. *Chap.* 14.

No License shall be but in open Sessions for Drovers, Badgers, &c. A Drover is meant here one that Buys Cattle in one place, and carries them to another to Sell. A Badger, one that buys Corn, or Victuals in one place, and carries it into another. Either of these so Trading must be a Married Man, and an House-holder, 30 Years old, or upwards, and Licensed, under the Penalty of five Pounds, by 5 *Edw.* 6. *Chap.* 14. Also he must have dwelt 3 Years in the County, Selling in open Fair, or Market, for Provision of Houses, not Prohibited to Badgers, Licensed by 5 *Edw.* 6. against Ingrossing; and these must give Bond not to Forestall, &c. Nor to buy Corn out of Fair, or Market, under the Penalty of five Pounds, unless so limited by special Words in the License.

Traders in Butter and Cheese Prohibited in open Sessions from Buying, if they do, are subject to the Penalties, in the 3 and 4 of *Edw.* 6. *Chap.* 12. and the 5 and 6 *Edw.* 6. *Chap.* 14. Notwithstanding they extend not to such Traders, Freemen of *London*.

None shall Ingross Oak Bark, under Penalty of Forfeiting it, 1 *Fac.* 21.

So of Hides coming to Market; nor Buy, except of the Owner of the Beast to be Spent in his House, under the Forfeiture of 6 s. 8 d. for every one.

Excepted out of 5 *Edw.* 6. Barly, or Oats to be made into Oat-meal.

So things belonging to Butchers, Fishmongers, Poulterers, Sold again at reasonable Rates.

So Corn, Cartel, &c. Reserved in a Lease taken. Also Wine or Victuals by Inn-keepers, dried Fish, Corn, Butter, and the like by Licensed Badgers, &c.

So Provision for a City, Shipping, Castles, or Ports.

So Fish brought by Persons dwelling within a Mile of the Sea, so Wine, Oils, and Foreign Victuals, (Fish, and Salt Fish excepted.)

Excepted out of 3 and 4 *Edw. 6.* and 5 *Edw. 6. 14.* Butter and Cheese bought by Freemen of London, and Sold again in the Liberties of the said City, Burrough of Southwark and Westminster.

Any Butcher that Gasheth, Slaughtereth, or Cutteth the Hide of the Ox, or Steer, or Bull, or Cow, so that it is impaired, loseth 20 *d.* or that Wetteth, or Watereth any Hides, unless in June, July or August; or putteth to Sale any putrified or rotten Hides, for every one of them loseth 3 *s. 4 d.* 1 *Fac. Chap. 22. Lamb. 462.*

A Butcher using the said Craft, and also the Mystery of a Tanner, loseth for every Day 6 *s. 8 d.* *ibid.*

A Tanner using also the Mystery of a Shoemaker, Currier, Butcher, or any other Artificer, Using, Cutting, or Working in Leather, looseth the Hides and Skins Tanned. *ibid.*

None may Buy or Contract for, or bespeak any rough Hides or Calves-skins, but only a Tanner, or Tawer of Leather, except Salt Hides, for the necessary use of Ships, on penalty of 6 *s. 8 d.* for every Hide so Bought, or Contracted for, 1 *Fac. 22. Lamb. 463.*

None shall Forestal any Hides coming to a Fair, or Market, except such as Kill for the Provisions of their House, on Penalty of 6 s. 8 d. for every Hide.

None may buy Tanned Leather, or Wrought, but such as will convert them into made Wares, except Necks, and Shreads of Sadlers, and Girdlers, upon Penalty to loose the said Leather. 1 Jacobi C. 22. Lamb. 463.

A Tanner putting to Sale any Insufficient Leather, not thoroughly Wrought and Tanned, or not well and thoroughly dried, and the same so found by the Tryers appointed, 1 Jacobi Chap. 22. looseth so much as is Insufficient, Lamb. 464.

See more of this in Statute 1 Jacobi 1. Chap. 22. &c.

All sorts of Spices, and Merchandizes Garblable in the City of London, and the Liberties thereof, shall for the usual Fees be Garbled by the Garbler, or his Deputy before they be Sold, upon Penalty of the Forfeiture thereof, or the Value Sold for; and so if afterwards mixed with Garbles, 1 Jacobi 19. Dalt. 131.

The Garbier of London, his Deputy, or Assign in the Day-time, may enter any House, Shop or Warehouse, to see if the Wares, &c. be Garbled; if not, to cleanse them; and Forfeitures of this kind to go to the Queen and Inform-er, *ibid.*

An Inn-holder in a Corporation, or Market-Town, where there is a common Baker that hath been an Apprentice therein Seven Years, may not make Horse-bread within his House, 32 Hen. 8. C. 41. 21 Jacobi C. 12.

An Inn holder, or Ostler in a Thorow-fair Town Corporate or Market-Town, being a Baker, and one that hath been an Apprentice thereto seven

Years, may make Horse-bread within his House,  
21 Jacobi 1. Chap. 21.

This sort of Bread, called Horse-bread, must be  
of a Lawful and sufficient Size, according to the  
Price of Corn, as it is at a Rate in the Neigh-  
bouring Markets at that time, according to the 21  
Jacobi 1. Chap. 21.

## C H A P. XXXI.

*Rates of Wages for Servants, according to Statute-  
Law, &c. And how to be Ordered by Justices of  
the Peace, &c.*

**R**ates of Wages for Servants and Labourers, are  
to be made by the Justices of the Peace in  
their Respective Divisions, or Counties, at *Easter*  
Quarter-Sessions, and by them to be Ingrossed in  
Parchment under their Hands and Seals, and after  
it is Lawful for the Sheriff of the said County  
wherein this is done, to cause Proclamation to be  
made of the several Rates so Rated, in so many places  
within his Jurisdiction, as to him shall seem  
Meet and Convenient, and as if the same had been  
set down Printed by the Lord Chancellor, or Lord  
Keeper, after Declaration thereof to Her Majesty,  
and Certificate thereof in Chancery, 39 Eliz.  
Chap. 4. 1 Jacobi c. 6. Lamb. 474.

Any giving Wages contrary to the Rates ap-  
pointed, Forfeits 5 l. 5 Eliz. Chap. 4. 1 Jacobi  
Chap. 6. Lamb. 474.

Every Justice (not shewing Lawful Excuse,  
Testified by Oath of one that is in Subsidy, five  
Pounds, &c.) that shall not Assemble at *Easter*-  
Sessions, or within 6 Weeks after, to Rate the  
Wages of Servants, Forfeits 10 l. 5 Eliz. Chap. 4.  
Lamb. 632.

Any

Any having the Authority to Rate Wages by the 5 *Eliz. Chap. 4.* may Rate the Wages of Labourers, Weavers, Spinsters, or of any Working by the Day, Week, Month, or Year, or by the Great, 1 *Jacobi Chap. 6.*

No Penalty for Certifying the Rates of Wages into Chancery, if they be duly Proclaimed, 1 *Jacobi Chap. 6.*

Rates of Wages Ingrossed in Parchment, are to be kept by the *Custos Rotulorum*; if in a Corporation, among the Records thereof, *ibid.*

Any two Justices of the Peace may imprison such Master or Mistress for 10 Days, without Bail, and their Servants, Workmen, or Labourers for 20 Days, upon their Respective giving, or taking greater Wages than are Assessed by the Justices of the Peace, and Proclamation thereof made in the County, 5 *Eliz. Chap. 4. Dalt. 823.* Every Retainer, Payment, or Promise of Wages, or any other thing whatever, contrary to the true Intent and Meaning of 5 *Eliz. Chap. 4.* and every Writing and Bond to that Intent and Purpose, is utterly null and void, *Dalt. 823.*

A Justice of the Peace may have his Action of Debt against the Sheriff for his Wages out of the Sessions, *Crompt. 177. a.* The Justice of the Peace shall be allowed his Wages out of the Fines and Assessments of the same Sessions, and he is to Assess the Fines in the Court, and it shall be allowed the Sheriff upon his Account in the Exchequer, 14 *R. 2. c. 11. Lamb. 628. Crompt. 177, &c.*

## C H A P. XXXII.

*The Office of a Coroner, in the Material Things he is to observe in the Executing of it. His Fees, and upon what Statutes, and other Warrantable Authority, he is to proceed.*

**T**HE Office of a Coroner is very Ancient, and has been, and yet it is held in high Esteem: For the Lord Mayor of London is held to be Coroner there, 2 Cro. 531. And the Lord Chief Justice of the Queens Bench, is Sovereign Coroner of all England, 4 Cro. 57. b. And he upon view of the Body of one Killed in open view, as a Coroner, may make a Record returnable into the Queens Bench, *ibid.*

But to come nearer to the intended Purpose, amongst other Matters, it is the Coroner's Business to view the Bodies of such as come to Casual Deaths, make away themselves, or are made away by others, or suspected to be put out of the World by a Violent Death, or Dying Languishing in Prison, where there may be any Suspicion the Party Dyed not Naturally, but by hard Usage, Starving, or that the Imprisonment caused his Death, &c. For he is to know, and Certifie how the Queen came to lose a Subject.

He is, says 3d Institute, fol. 129. to have *Visum Corporis* of a Prisoner Dying in a ~~Goal~~ by reason of Duress. And the Jury or Inquest, before the Coroner, is to be of Persons within the four next adjacent Villis, made by the Bailiffs or Constables, and no Challenge lies to any of them so Legally Summoned on the Inquest, 1 Cro. 135. And upon a View of the Body, and a strict Examination how the Party came by his Death, they must give in their Verdict to the best of their  
Judg-

Judgment, according to the Evidence, or other Matters appearing to them, whether it be *Felo de se*, he Killed or Drowned himself, &c. or Died by the Hand of other Person or Persons, or by the Fall of a House, Wall, Timber, Kick of a Horse, or any other Matter or Thing that brought the Party to an untimely End; and the Coroner being so satisfied, he is to give his Warrant for the Burial of the Party, according as it shall be found upon Verdict, and an Indictment may be grounded thereon against such Party or Parties as shall be found concerned. And in this Case he has Power to Commit and Bind over Persons accused before him of Murther, or the like, as he sees Cause. And for doing his Office of one Slain or Murthered, he may lawfully take 13 s. 4 d. of the Slayer or Murtherer; and if he have none, then of the Town where the Murther was committed, or the Murtherer suffered to Escape, 3 Hen. 7. Chap. 1. Lamb. 434.

A Coroner refusing to do his Office of one slain by Misadventure, without Fees, loose 40 s. 1 Hen. 8. Chap. 7. Lamb. 434.

Writs shall be Awarded to the Coroner, where the Sheriff is Party. The Writ of Covenant in a Fine, *Venire facias*, &c. 1 Crompt. 416.

One Person may be Coroner of the Queens House [Hostel] within the Verge, and of the County too, 4 Co. 46. B. But where there are several, one cannot meddle within the others Jurisdiction. *ibid.*

Coroners, as Ministers, must all join, 4 Co. 57. B. A Coroner, to whom a Writ of Estrepement is directed, is to provide against Wast, by taking *Posse Comitatus*, H. 7. Chap. 85.

An Appeal, or an Acculation, by an Approver, is to be entered before the Coroner, 3 Inst. 120.



## 80      A Help to Coroners, &c.

Coroner may be removed by being *Minus Idoneus*, 5 Co. 58. B.

A Coroner concealing, and not doing his Office, through Fear, or for Prayer, or Affinity, &c. shall be Fined and Imprisoned for a Year, or 3 Years, if he cannot pay the Fine, by 3. Eliz. So of other Officers.

Coroners ought to certify their Inquisition at the general Goal delivery, and not at the Sessions, 1 and 2 P. and M. 13. Lamb. 365.

Coroners being Parties to the Exigents and Judges of the Outlawry, ought to be present at the Sessions. *ibid.*

Coroners are Conservators of the Peace, and may in some Cases Commit Men to Prison, *ibid.*

There lies no Traverse to an Indictment before the Coroner *super visum Corporis*, 3 Inst. 55.

Coroners may be Convicted of Offence against the Statute, 1 Hen. 8. Chap. 7. by Examination of Witnesses, and touching Extortions, or not Executing their Office before the Justice of Peace, Cro. 130. b. Lamb. 435.

Coroners exacting a above a Noble for the View, and 2 s. for his Clerk, Fine 40 s. See 1 Inst. 149.

## C H A P. XXXIII.

*Some other Matters relating to the Coroners Office, and Duty in View of Dead Bodies, out of Rastal, &c.*

**T**HE Law, says he, is, if any Man or Woman, &c. be Wounded, and thereby in Peril of Death, the Party that did it, or was helping in doing it, being apprehended, may be Com-

Committed and kept in Custody, till it be perfectly known by the Testimony of Skilful Persons, whether the Wounded Party will Live or Die of those Wounds or Blows given, and if he Die, the Coroner upon view of the dead Body, shall inquire of him, or them that have done the Fact, whether Man or Woman, and take the Names of them that were present as Witnessees, or any other-ways knowing of it. Also he shall take especial notice of the Abettors and Concealers in, or towards the Fact, or any way therein concerned, and so found, to Enrole and Certifie the same.

The Coroner, according to his Inquest, shall give in their Verdict, if there be Cause; for he is to take care to Prosecute the Offender or Offenders, if the Relations of the Deceased, or others refuse, or are slack in so doing; so that if any Man, &c. be Slain or Murthered, and there- of the Slayers, Murtherers, Abettors, Main- tainers and Comforters may be Indicted, and brought to Arraignment and Tryal of the Is- sue, whether they are Guilty of the Murther, Manslaughter, &c. or not Guilty, which may be done any time in a Year and a Day after the same Felony and Murther Committed; which must be Dated from the Time of the Wounding, or Beating, not from the Time of the Dying, if the Party Languish, and live any time after, tho' somewhat considerable, as a Week, a Month, or more.

And the Wife, or Heir of the Person so Slain or Murthered, as the Case requires, may Commence His, or Her Appeal in proper Person, any time within the Year after the said Felony done, before the Sheriff and Coroner of the County where the said Felony and Murther was done; or before the Queen in her Bench, or Jus- tices of Goal-Delivery. And the Appellant in

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any Appeals of Murther, or Death of a Man, &c. where Battle by the Course of Common Law seeth not, may make their Attorneys, and appear by the same.

And the said Appeals after they be Commenced, may be proceeded into the end of the Suit and Execution.

If a Murtherer, or Man-slayer escape, the Justices of the Peace have Power to enquire of such Escapes, and to Certifie 'em in the Queens-Bench; and that after the Felony found, the Coroners deliver their Inquisitions before the Justices of the next Goal-Delivery in the Shire or County where the Inquisition is taken; and they are to proceed against such Murtherers if they be in Goal, or else Certifie the Inquisition in the Queens Bench, or as it is Worded, put the said Inquisition before the Queen in her Bench.

All such Coroners as are Remiss in their Office, or Duty of their Place, and make not their Respective Inquisitions upon the view of the Dead Body, and Certifie not according as afore-said, or Ordained; every Coroner for such Offence, Forfeits to the Queen  $\text{5} \text{ l.}$  by  $3 \text{ Hen. } 7.$   
*Chap. I.*

And now, that the Coroner may not be ignorant what *Murther* is, I shall briefly lay it down in General, and many Material Particulars.

**CHAP.**

C H A P. XXXIV.

*Murder, how to be taken, and what is observable therein, to make it so wilfully, &c.*

**M**urder is when a Man or Woman upon Malice propense, Precedent, or Fore thought doth Feloniously Kill another living within the Realm, or under the Protection of the Queen, whether openly or privately done, or whether the Party Slain be *English*, or an *Alien*, *Lamb.* 237. *Dalt.* 342. *Crompt.* 21. *a Num.* 1. Clergy taken away, 1 *Edw.* 6. And in this Case Killing shall have Relation to the Death, and not to the Stroke, 4 *Coke.* 42. *Crompt.* 21. *a Num.* 1.

Malice is either Expressed, *Crompt.* 21. *a Dalt.* 241. or Implied. *Lamb.* 239.

Malice Expressed, is in a Case where it is known there is Malice between the Parties, *Crompt.* 21. *a.* and is apparent, and where there is a preceeding falling out, or lying in Wait, or Time and Place Appointed, *Lamb.* 238. *Dalt.* 343.

Malice implied is to be taken where a Man or Woman, &c. is killed suddenly without Defence, *Crompt.* 21. *a Numb.* 2. *Dalt.* 343. As one busie at Reading, or going over a Stile suddenly Killed by a Party, or where one Killeth another without Provocation, one Stabbed, and not having a Weapon drawn, Dying in six Months, these are Murder, and so noted by *Dalton*, *Lambert*, *Crompton* and others, and the Statute of Stabbing, 1 *Jac.* 1. *cap.* 8. *Dalt.* 343.

To Kill an Officer known in Executing Process, *Dalt.* 343.

So to Kill an Officer unknown, if he shew his Warrant; and if an Officer hath the Queens Writ or lawful Warrant, though the Proceſs be Erroneous in Awarding, or one Proceſs taken for another, and the Officer be Slain in Executing it, it is Murther, *Dalt.* 343. 2 *Cro.* 280. 9. *Co.* 68. *Lamb.* 240. So tho' the Arrest were made in the Night time. But where the Arrest is Tortious, or where an Officer not known shews not his Warrant, or the Arrest be made on the Lords day, usually called *Sunday*, (by *Stat. Car.* 2.) it is but Manslaughter, *ibid.*

It is Murther to Kill a Magistrate or Minister of Justice, in Executing his Office, or in keeping the Peace, *Crompt.* 25. *B. Numb.* 51. *Dalt.* 343.

An Officer Whipping or Branding to Death, is Murther, 344. A Rioter killing an Officer, or Assistant coming to suppress a Riot, it is Murther in the Rioters, *Dalt.* 443. *Crompt.* 23. *B. Numb.* 28. *Lamb.* 241.

A Thief Killing a True Man resisting, it is Murther of Malice Propense, for here Malice is implied by the Law, because the Thief came purposely to do an ill Act, tho' not purposely to Kill the Man. See *Lamb.* 241. *Dalt.* 344. *Crompt.* 22. *a. Numb.* 13. 9 *Co.* 67.

One Assaulting another, after the Assault flyeth to the Wall, and then killeth the other, it is Murther; for he Slew him in the said Malice wherein he did Assault him, *Lamb.* 239.

One Condemn'd to Die, is Killed by a private Person without Warrant, or by the Judge who Condemneth him, or by the Officer contrary to the Judgment, it is Murther, *Dalt.* 340. *Lamb.* 240. 5 *Eliz.* 1.

So a Physitian or a Surgeon, having Malice, Applies a contrary Medicine, of which the Patient Dies, *Dalt.* 344.

A Person carrying his Sick Father, &c. and laying him in the cold Frost, &c. so that he Dies, is Malice ; for by it the Law presumes he intended his Death. So a Strumpet covering her Child with Leaves in the open Way, &c. to hide it, and a Beast tramples on it, and Kills it, or a Cart goes over it, &c. *Lamb.* 240. *Dalt.* 352. and of the former, *Dalt.* 344. *Lamb.* 740. And many the like Cases, too long to be here set down, where there is Malice fore-thought, Propense, or that the Law presumes, or implies it to be Malice in the Party who Kills another, or sets on another to do it, by Assassinating, &c.

# C H A P. XXXV.

*Homicide and Manslaughter, Felo de se, &c.*

**H**OMICIDE is Killing of a Man by Man, *Dalt.* 339. 349. *Ex vi Termini* comprehends Treason, Murther, &c. It is no difference whether the Party Slain be a *Denizen*, *Alien*, or *English* Man, if he lives under the Queens Protection, *Dalt.* 340. *Lamb.* 237. *Crompt.* 221. a. *Numb.* 1.

To Kill one Attainted for Treason or Felony, or Outlawed for Felony, or Attainted in Premunire is Felony, by 4 *Eliz.* *Stamford.* 13 *Dalt.* 342. *Crompt.* 24. a *Numb.* 39.

Homicide is either killing himself, *Felo de se*, or by another, and *Felo de se* ; a Man by killing himself Forfeits to the Queen his Goods and Chattels, Real and Personal, and his Debts due by Speciality,

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Speciality, *Dalt.* 341. But no Lands nor Blood Corrupted; *ibid.* But his Goods are not forfeited till his Death, *ibid.*

An Infant, or *non compos mentis*, does not forfeit, but a Lunatick killing himself out of his Lunacy, doth forfeit his Goods, *Dalt.* 340.

Homicide of another, is either Voluntary, or Involuntary; Voluntary is Murther, *vide* Murther, or Manslaughter.

Manslaughter, is when Two Men, &c. fight together on a sudden without precedent Malice, and one of them kill the other, *Dalt.* 349. *Lamb.* 248. *Crompt.* 16. a.

Manslaughter is either by Chance-medley, or *se defendendo*, House and Goods.

By Chance-medley is Felony, but may have Clergy, *Dalt.* 349.

One Fighting breaks his Weapon, another standing by puts one into his Hand, or otherways lends it him, and with it he kills another, it is Manslaughter in the Lender, *Dalt.* 134. *Crompt.* 16. b. *Numb.* 12. *Lamb.* 252.

The Servant fighting in his Masters Defence, though there were Malice in the Master, and not told to the Servant, and one be killed, *Lamb.* 240.

So a Stranger taking part, *Lamb.* 238. is Chance-medly, *Dalt.* 348.

If two that were in Malice are Reconciled, and fall out upon a new Occasion, and one is killed, it is Manslaughter only, *Dalt.* 350. *Lamb.* 250.

*Se defendendo*, is where one killeth another in the necessary Defence of himself, or his, thereby to save himself, or his Possessions or Goods, or some other Person which he is bound to defend from Peril, and it is either against a Felon, Mur-



Murderer, Thief, or Loyal Subject. *Dalt.* 356.  
*Lamb.* 152.

Against a Loyal Subject, if he be Assaulted by another Man, he must fly so much as he may till he be letted by some Wall, or other material Hindrance, that his Necessity of Defence may seem Inevitable; and he shall be Committed till the time of his Trial, loose his Goods, and Sue out his Pardon, *Lamb.* 253. *Dalt.* 35. It is not material, if he strikes again before he gave any Deadly Wound, if he flies to the Strait, *Dalt.* 357, 358.

If a Man fly to a Wall, and hold out his Weapon, if the Pursuer run upon it and is killed, it is *se defendendo*, and forfeiteth his Goods. *Crompt.* 28. *a. Numb.* 7. *Dalt.* 349. But if he had fallen on the Ground, and the other fall on it and Kill himself, there is no loss of Goods; for he could not fly, and the Slain is in a sort *Felo de se*, *ibid.* *P. R.* 122. *b. Stam.* 16. *a.*

If a Man fall to the Ground, then his flying to a Strait is not necessary, because he might be there inevitably Killed, if he did not defend himself, *Dalt.* 347, 358.

An Officer or Minister of Justice, Executing his Office, is not bound to fly, *Dalt.* 358. *Coke* 98, 99.

If a Servant Kill one that Robb'd or Kill'd his Master, so it be done presently, or in defence of his Masters Person or Goods, if he could not otherways have avoided the same. *Dalt.* 358. *Crompt.* 28. *Numb.* 2.

To Shoot at one that comes to Burn a Mans House, is justifiable in him or his Servants, *Dalt.* 356, &c.

In the Defence of the Possession of a Man's Goods or House, he may justify to beat him, but may not Kill him, though the Party come wrongfully to take his Goods, unless he be a Thief, *Dalt.* 358. &c.

To Kill a True Man in Defence of House, Goods or Land, is Manslaughter; *Dalt.* 338. *Crompt.* 27. *b.* *Numb.* 4.

## C H A P. XXXVI.

### *Involuntary Homicide.*

**T**HIS is either by Misadventure or Necessity.

The first is, when a Man doing a Lawful Act, Killeth a Man: This is nor Felony of Death, but he shall have his Pardon of Course for Life, and Lands, but forfeiteth his Goods, *Lamb.* 254. *Dalt.* 351.

*For Example:* A School-Master, Father, Mother, or Master Correcting a Child, Scholar or Servant: Moderately Shooting at Pricks, Butts or lawful Marks: A Work-Man casting Tiles, Timber or Stone from off a House, or any thing from a Cart, and giving warning, or doing other Lawful things, giving warning.

But the Killing of a Man in doing any unlawful Act without evil Intent, is Felony; as shooting Arrows, casting Stones into Highways where People resort, or unto other places of usual resort, *Dalt.* 352.

If a Man be Slain by the Fall of a House or Tree, by a Beast, &c. Any Party by a wilful Default causing it, it is Felony, *Dalt.* 351.

The

The Thing that causes the Death, is a *Deodand*, and forfeited to the Queen, *Dalt.* 353. *Crompt.* 35. a.

*Deodands* are not Forfeited, till the Matter be found on Record.

If a Man be Slain under 14 Years of Age, nothing is Forfeited as a *Deodand*, *Dalt.* 353. *Lamb.* 21, &c.

C H A P. XXXVII.

*Of Appeals in Case of Murthers, &c. fit to be known by Coroners, and others; with the manner of proceeding in such Cases.*

THE Word Appeal, is derived from the Verb *Appeller*, to call, because the Party bringing it, calls the Delinquent to Judgment; but it is the same with an Accusation, and they are of three sorts, viz.

(1.) An Appeal brought by an Heir, for some Injury done to his Ancestors, whose Heir he is.

(2.) An Appeal brought by a Wife for wrong done to her Husband, and by her only it can be brought, if it be for his Death, who has the right to prosecute it.

(3.) A wrong done to the Appellants themselves, as some Robbery, Maim Rape, &c. *Coke Instit. Sect.* 500.

And where a Murther is committed, it must be brought within a Year and a Day, for after that time it cannot be brought at all, and by a Statute of *Hen. 7. Chap. 1.* it is Enacted, that the Coroner shall do his Office, and the Offenders may be Attainted at any time within the Year, at the Queens Suit, but if acquitted, yet the Party within the Year and Day shall have Liberty

to

to bring an Appeal against such Person either acquitted or attainted, if the benefit of the Clergy be not before thereof had, and in order thereunto, if any Person happeneth to be acquitted for the Death of a Man within a Year, the Justices before whom he is acquitted, shall not suffer him to go at large, but either to remit him again to Prison, or to let him to Bail after their Discretion, till that Year and Day be past, that so he may be forth-coming to answer the Appeal if any be brought within that time.

*The Form of an Appeal of Murder.*

J. G. *Hic Instanter Appellat R. B. &c.* In English thus; J. G. here instantly Appeals R. B. of the Death of her Husband W. G. for whereas the aforesaid W. was in the Peace of God and the Queen at *Uxbridge* in the County of *Middlesex*, on the Eighth Day of *February*, in the second Year of the Reign of our Sovereign Lady *Anne*, &c. At 5 of the Clock in the Evening of the same Day, came the said R. B. as a Felon of our Lady the Queen, of a premeditated Assault, with Force and Arms, &c. and upon him the said W. G. then and there Feloniously an Assault did make, and with a certain Sword made of Iron and Steel to the value of 5 s. which he then and there in his Right Hand did hold, the aforesaid W. upon his Head did strike, and one Mortal Wound of two Inches long, on the forepart of his Head, and an Inch deep, even to the Brain of the said W. did then and there Feloniously give; of which said Wound the said W. for five Days after following did languish, and on the thirteenth Day of the same Month in the year aforesaid, he there Died, [or if the Case be so, instantly Died,] and so the said R. B. as a Felon of

of our Lady the Queen, the aforesaid *W.* Feloniously did Kill, and Murther against the Peace of our said Sovereign Lady the Queen, Her Crown and Dignity; and this he did Wickedly, and as a Felon against the Peace of God, and our Lady the Queen; the aforesaid *J. G.* offers that the same be detained as the Court of our Lady the Queen shall think meet.

And though a Woman can in case of Murther bring an Appeal for the Death of her Husband, yet otherwise may She bring an Appeal of Robbery, &c. for therein She is not restrained by *Magna Charta, Chap. 34.* according to the Opinion of my Lord *Coke Instit. 2. Fol. 68.*

But if the Widow of the Murthered Husband Marry again before the Appeal is Entered, or when it is depending, it shall abate; that is, it can be of no force; nay, if in her Appeal she hath Judgment against the Defendant, if after She Marries, before he is Hanged, she can never have Execution of Death against him; but if she be not Married, she may proceed to Execution, and it is held she has Power to Pardon him, or Remit his Offence, even at the Gallows; and also the time for the Year and Day limited, is to commence from the time the Party dies, not from the time of the Wound, or Cause of his Death given, for till he Dies, there is in this Case no Felony committed.

If an Appeal of Murther be brought, and the Suit depending, and after the Year and Day be elapsed, one become accessory to the Murther, the Plaintiff shall have an Appeal against him after the Year and Day past, but it must be brought within the Year and Day after the new Felony of accessory. And thus much I thought fit to add to the Office of a Coroner, for though this is rarely practised,

Practised, it is still in Force, though too often compounded by those that have right to prosecute in Appeals.

## C H A P. XXXVIII.

*Customs, Advantages, &c. peculiar to the City of London. Statutes made in its Favour. Of the Court of Request, commonly called the Court of Conscience, &c.*

*Feme Sole Merchant.*

A Feme Covert shall have an Action without her Husband, she being the Wife of a Freeman of London, by the Custom of the City of London, and an Action may be brought against such a Woman, Sole Merchant, without naming her Husband; but it seems her Dealing must be different from his, &c. 1 Edw. 4. P. 1. 35. Hen. 6. 38.

Where Plaint is entred against the Husband and Wife in London, because the Wife is a Sole Merchant, or against another, to find better Sureties there, if the Suit be here in Trespass, or otherwise, and the Wife appeareth upon an *Exigent* upon a *Habeas Corpus* or *Comath* in *torney* here, so as she cannot make an Attorney here, although the Plaint be upon the Custom only, for which at the Common-Law there is no Remedy, yet the Prisoner may be Discharged of the first Suit, and shall be sent to the Fleet, &c.

And

And if he who is Outlawed, coming to Sue forth his Charter of Pardon, be Arrested, he may have his Privilege; and so it is of one who cometh to Sue forth a Writ of Error, he shall have his Privilege here, if he be Arrested in the Queen's-Bench, *M. 9. E. 4. 35, 36.*

Where a Gift of Goods by a Woman is pleaded in Bar in an Action of Trespass brought, if the Plaintiff say the Woman was his Wife at that Time, if he say that the Custom of London is that Women are Sole Merchants, &c. The same is a Departure, *Hen. 7. 21. H. 18. B. 1.*

In London, a Debt upon simple Contract is good against an Executor. *M. 1. E. 4. 6. P. 1.*

C H A P. XXXIX.

*Where an Action will lie before the Day, or Payment, to find better Sureties by the Custom of London.*

IT is Ordained, That a Merchant may cause his Debtor to come before the Lord Mayor of London, or of any other Town, and a Clerk by the Queen appointed, to acknowledge his Debt, and the Day of Payment, &c. *Vide Stat. Burnel, 11 Edw. 1. Recog. 1.* And afterwards it is enlarged by the Statute *de Mercatoribus*, and a more speedy Remedy is given, *13 Edw. 1. Recog. 2.*

The Custom of London is, if a Man be Fugitive who is Indebted, that the Creditor may Arrest him to find better Sureties, but he shall not Recover before the Day of Payment, *5 Edw. 4. Lond. 24.*

Where one is Arrested in London, to find better Sureties, if the Suit be here in Trespass, or otherwise, and he comes by *Cepi Corpus*, although the  
Plaint



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Plaint be upon the Custom only, for which Remedy is at the Common Law; yet the Prisoner may be discharged. 9 *Edw.* 4. 35.

The Custom of *London* is, that one may be Arrested before the day of Payment, to find better Sureties, 11 *Hen.* 6. 3. p. 1.

*Covenant without Deed.*

In *London*, an Action of Covenant lyeth without a Speciality, and divers other Actions by Custom, which do not lie at Common Law, and of small Contracts under 40 s. for which an Action doth not lie by Writ, *Hen.* 14. *Hen.* 6. 26. P. 1.

*Of Mainpernors for the Defendant.*

By the Custom of *London*, he who is Bail for another for Debt, or Trespass, to answer the Action, that if he be Condemned, that the Plaintiff shall have Execution as well against the Bail, or one of them, as against the Principal, at his Election. And it was holden, that in such a Case he may maintain for the Charges that shall be upon him.

*Sequestration by Custom of London.*

By the Custom of *London*, in an Action of Debt, the Defendant shall have four Defaults, and if he cannot be found, but hath shut up his Shop, and is gone, a Precept shall be to the Sergeant at the Plaintiffs Request, to Sequester the Goods of his House, 11 *Hen.* 7. 2. p. 2.

*Contribution.*

Debt was upon the Custom in *London*, because the Plaintiff, and three others were bound jointly and severally in one Bond, and one pays all the Debt, or part, or the whole is recovered against him, he may have an Action of Debt for Partition against the other Obligors, *Enter*, 1660.

*Debts under 40 s. in London.*

Every Citizen and Free-Man of *London*, and every other Person Inhabiting, or that shall Inhabit within the City of *London*, and Liberties thereof, being a Trades-man, Victualler or Labouring-man, which have, or shall have any Debts owing to him, or them, not amounting to 40 s. by any Citizen or Freeman, [or by any other Person, or Persons, being a Victualler, Trades-man or Labouring-man, Inhabiting within the said City or Liberties thereof,] shall, or may cause such Debtor, or Debtors to be Warned to appear before the Commissioners of the Court of Request in *Guild-hall*, and the said Commissioners, or any 3, or more of them shall have Power to set down such Orders between Plaintiff and Defendant, Creditor and Debtor, touching such Debts not amounting to 40 s. as they shall find to stand with Equity and good Conscience. And also the said Commissioners, or any 3 or more of them, have Power to Administer an Oath to the Creditor, or Debtor, and to such Witnesses as shall be produced on either part, and also to commit to Prison in one of the Counters, such Creditor or Debtor, as shall not appear upon lawful Summons, or not perform such Order as the

the said Commissioners, or any 3, or more of them shall set, 1 *Jac.* 1. 3 *Jac.* 1. the first Act being strengthened by the latter, and by it the Court of Requests, commonly called the Court of Conscience, is Established to this Day; happy for the poorer Sort, keeping them from many Misfortunes that would else befall them, to the farther filling and crouding the Goals by Strifeful Vexations, for small and trivial Matters, were not this Court a Bar to restrain them, to the great Ease and Security of poor People.

It is held before the Commissioners at the East end of the *Guild-Hall*, *Wednesday* and *Saturday* Weekly, beginning usually about 11 in the Morning, and sometimes if Business require it, it may be sooner.

## C H A P. XL.

*Marking a Cause in the Mayors Court, after a Verdict given in the Sherriffs Court to be done.*

**T**Here is a Practice in London, called, *Marking a Cause before the Lord Mayor*, which is after a Verdict given in the Sheriffs Court for the Plaintiff; in this Case the Defendant is to get the Cause mark'd before the Lord Mayors Court, and is like an Injunction in the Chancery, to stay Judgment and Execution, until the Matter be Examined in Equity, where the Lord Mayor doth oftentimes, if Cause be, Mitigate the Damages, or give the Defendant time to pay it.

*Of Foreign Attachments, &c.*

By the Custom of *London*; one may Detach either Money or Goods of the Defendants, either in the Plaintiffs own Hands, or in the Custody of a third Person, in either the Mayor or Sheriffs Courts; and there, if the Defendant appear not, the Goods or Money may be Condemned. The Attachment is Entered in the Office, as Actions are, but with this difference; they Enter the Hour of the Day when the Attachment is made, for if many Attachments be made, and come against one Mans Goods, the first is first served.

He whose Goods are Attached in another Mans Hands, may come and offer himself to Prison, or put in Bail, and dissolve the Attachment, and after have a Writ of Privilege, though he render himself to Prison *Gratis*, because he was in there by Virtue of a Plaint. But the Plaintiff may have a new Plaint against the Defendant, and Attach him by his Goods, and then the Defendant may remove it by *Certiorari*; and when the second Plaint is removed to the *Common-Pleas*, the Justices shall Examine if the Goods were Attached for Costs of Suit, and then the Defendant may be discharged; but if it be found by Oath, that they were Attached for Merchandizes, or for any Cause than before, it shall be Remanded.

But if the Party were in Execution in *London*, and afterward Suit is commenced in the *Common-Pleas*; a Writ shall go to the Mayor and Sheriff, to have the Prisoner there, and make an Attorney, and then he shall be sent back; but if he were impleaded in the *Common-Pleas*, and afterwards Arrested in *London*, and the Mayors-Court send for the Party, he shall be Discharged

of the Suit in *London*, by the Privilege of the Mayor's Court, *M. 38. Hen. 6. 12. P. 2.*

When an Attachment is made in the Hands of a third Person, there after a Default, the Defendant within a Year and a Day, may put in Sureties to Answer the Plaintiff the Duty, or may render his Body to Prison, if he cannot find Sureties; and therefore in a Writ of Privelege, after he had yielded his Body to Prison, he was Bailed, because the yielding his Body to Prison, was after the Suit in the *Common-Pleas*, by the Defendant *Gratis*; where the Attachment was before the Suit in the *Common-Pleas*, the Defendant was sent back again to Prison in *London*. But where upon a *Capias* out of the *Common-Pleas*, and a *Nihil* Returned, the Defendant is Arrested in an inferiour Court, coming to this Court, he shall have the Privilege of his Court, because it is an Arrest of his Body, *N. 20. Hen. 6. 3 P. 1.*

### C H A P. XLI.

*Many useful Matters advantageous to Prisoners, in Relation to the Habeas Corpus Acts, and others*

**T**HE Law of *England* is Allowed, even by Strangers, to be a Law of Mercy, and the best Constituted of any other in the World; having a principal Regard and Care of three the most Material Things, viz. Life, Liberty, and Estate; next to the Life of Man, Liberty is the most pretious and desirable; and therefore saith *Fortescue*, the Laws of *England* in all Cases favour Liberty.

And to this end, the Writ of *Habeas Corpus* is a Remedy given by the common Law, for such as  
were

were unjustly detained in Prison, to procure their Liberty, but much more advantageous, since the Act of *Tricesimo Primo*. Car. 2.

This Act concerneth either, first, Persons committed for some other Criminal, or supposed Criminal matter besides Treason or Felony; and these are to have a *Habeas Corpus* immediately.

2. Those who in their *Mittimus* are charged with Treason or Felony, and such shall have the benefit of that Writ after the Time limited.

1. If any Goaler or Under-keeper shall not deliver a true Copy of the *Mittimus* within 6 Hours after it is demanded by the Prisoner, the Head-Goaler or Keeper forfeits to the Prisoner for his first Offence 100 *l.* for the second Offence 200 *l.* and looses his place; nor is there any Fee to be payed for the same. The Turn-key must deliver it at his Peril, and if the Prisoner be lockt up and none be admitted to see him, any Friend may demand it for him.

If Treason or Felony be not expressly charged in the *Mittimus*, any Person in the Prisoners behalf, carrying such a true Copy of the Commitment to the Lord-keeper, or any of the Judges, or Barons of the Exchequer; or upon Oath made that a Copy was demanded, and denied, he shall grant an *Habeas Corpus* or forfeit 500 *l.* to the Prisoner; but this request must be made to such a Judge in Writing, and attested by two Witnesses.

If the Sheriff or Goaler do not carry up the Prisoner, and return the true cause of his detaining within 3 Days, if under 20 Miles; or within 10 Days, if above twenty, and under 100 Miles; or within 20 Days, if above 100 Miles, he forfeits 500 *l.* to the Prisoner.

But the Prisoner must pay the Charges of his carrying, and the Judge when he grants the Writ may order how much, but it must not exceed 12 d. a Mile, and if upon the return of the *Habeas Corpus*, it appears the Prisoner is not charged with Treason or Felony, especially and plainly expressed, or of such Matters as by Law are notailable, the Judge shall discharge the Prisoner upon Bail.

~~And~~ Note further, that if the Person so Bailed out shall again be Imprisoned for the same Offence, those that do it forfeit 500 l.

If there be high Treason or Felony plainly and specially expressed, then the Prisoner cannot have his *Habeas Corpus* till he has the first Week of the Term, or the first day of the Sessions of *Oyer and Terminer*, or General Goal-delivery, Petitioned in open Court to be brought to his Tryal; and then if he be not brought to his Tryal the next Term, or following Sessions, on the last day thereof, he shall be admitted to Bail, and if not Indicted the the second Term, or Sessions, he shall be discharged. And this Act extends to all places within *England and Wales*. And that no Person shall be sent Prisoner out of *England or Wales*, into *Scotland, Ireland, Jersey, Guernsey*, or into any other place beyond the Seas; with many other Provises and Clauses, very beneficial to the Liberty of the Subject.

And as the Law thus provides for Mens Liberties, so it takes Care they shall not be abused, or wronged, when in Custody, as appears by the Statute of 22 and 23 *Car. 2. Chap. 20.* where among other Provisoes these for Debtors.

That no other Fees shall be payed, but such as are allowed by Law. That they shall not be carried to any Tavern, Ale-house, or other Publick, Victualling or Drinking-house, without their free consent; so as to charge them with any sum of Money, for any Wine, Beer, Ale, Victuals, Tobacco



## Customs, &c. of London. FOR

bacco or any other thing whatsoever; more than what he or she shall call for of their own Accord. That no Officer or Officers shall take, demand, or receive, or cause to be taken, demanded, or received, directly or indirectly, any other, or greater Sum or Sums, than what by Law ought to be taken, or demanded for such Arrest, taking or waiting till such Person or Persons shall have procured an Appearance, found Bail, agreed with his or their Adversary, or be sent to the proper Goal belonging to the County, City, Town, or Place where such Arrest or taking shall be.

That they shall not exact any other Reward or Gratuity for so keeping the said Person or Persons out of the Goal or Prison, than what he, she, or they, shall or will of his, her, or their own Accord, freely and voluntarily give, nor take nor receive any other or greater Sum or Sums for each Nights lodging, or other Expences than what is reasonable and fitting in such Cases, or shall be adjudged by the next Justice of the Peace, or at the next Quarter-Sessions.

That they shall have free Liberty in Prison to send for Drink, Victuals, and other convenient Necessaries, where they please, without interruption, also to bring in their Beds, Linnen, &c. as they shall think fit, without any purloining, detaining or paying for the same, or any part of them, nor receive any other greater Fee or Fees whatsoever, for his or their Commitment, Release or Discharge, or for Chamber Rent, than what is allowable by Law; and that they the Prisoners shall have and enjoy the Gifts belonging to the respective Prisons, without any defraud, receiving the full benefit thereof, according to the true intent of the Donors.

That no Prisoners for Debt shall be lodged in the Room or Chamber together with Felons, but that they shall be put, kept and lodged separate

and apart, in distinct Rooms, upon pain that he, she, or they that shall offend against this Act or the true Intent and Meaning thereof, or any part thereof, shall forfeit or loose his, or her Office, Place or Imployment, and forfeit treble Damage to the Party grieved, to be recovered by Virtue of this Act, or any Law, Statute, Usage or Custom to the contrary in any wise notwithstanding.

## C H A P. XLII.

*Some Matters relating to Orphans in London.*

**B**Y the Custom of the City of London the Lord Mayor and Aldermen of the City, shall have the Custody of all Orphans within the City, and they may commit the Custody of such Orphans to their Guardians; and if an Orphan be taken away from any other Man, &c. to whose Custody he is committed, he shall have a Writ of Ravishment of Ward, so that in this case the Court doth in some wise resemble the Court of Wards.

Likewise the Lord Mayor and Chamberlain of the City of London for the time being, shall have the keeping of all the Lands and Goods of Orphans within the City; saving to the Queen and some Lords, their Right of such as hold of them, out of the same Liberty.

Executors and Administrators are to exhibit true Inventories before the Lord Mayor and Aldermen, and give Security to the Chamberlain for the time being, by Recognizance; and upon refusal so to do, the Court may commit them to Prison till they shall do it.

And all such Recognizances or Bonds made to the Chamberlain concerning Orphans, shall go to him and his Successors, the Chamberlain of the Ci-

ty being a Sole Corporation for Orphans. If the Ecclesiastical Court doth impugn the Custom of the Court of Orphans, and if any Orphan Sue in the Ecclesiastical Court, or elsewhere for a Legacy, or any Duty due to them, the Court of Orphans may by Custom grant a Prohibition; *Coke Institut.* 4. Part Folio 249.

Also by the Custom of *London*, if a Father advance any of his Children with any part of his Goods that shall bar them to demand any further, unless the said Father under his Hand, or by his Will and Testament, doth declare, that it was but in part of Advancement; and then that Child so partly advanced, shall put his part so received in Hotch Potch with the Executors and Widow, and have a full third part of the whole, accounting that which was formerly given him as a part thereof; and this the Civil Law calls *Collatio Bonorum*.

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C H A P. XLIII.

*Of the Office and Court of Assurance for Merchants, &c.*

**A**S for this Court or Office, for the better Encouragement of Merchants, and other considerable Traders, was first erected by the Statute of the 43. *Eliz. Chap. 12.* and upon some hinderance and delay, by reason of the many Persons that were constituted to make up a Court, it was taken into further consideration, and a Statute made 12. *Car. 2. Chap. 23.* Three Commissioners were empowered to make up this Court, viz. a Dr. of the Civil Law, a Barrister of the standing of 5 Years, and a Merchant, or who af-

ter being Sworn before the Lord Mayor of *London*, have power to Act in all Cases, as to Hear, Examine, Order or Decree, such Causes in a Summary manner as shall come before, without delay of tedious Pleadings, or chargeable Attendance, with a power to Summon Persons, Examine upon Oath, and for Contempt, or where they see just Cause, they may commit the Offender to Prison. If any Witness refuses to come upon the first Summons, and a Tender of reasonable Charges, upon the second Summons he may be Imprisoned by this Court, or pay Cost, and usually Causes come in 14 Days to an Issue, their Proceedings being as well out of Term as in Term; and if the Sentence given in this Court be supposed to be unreasonable, then the Party aggrieved, may appeal to the *Lord-Chancellor*, in the *High Court of Chancery*, who has Power to determine the same; but before any Appeal can lye, the whole Sum in Dispute must be payed, with full Costs, to the Appealed.

This Court may Decree against many Insurers at once, which at Common Law must be Sued distinctly, though the Execution cannot lye against Body and Goods; but at common Law it may lye against either.

If a private Policy of Insurance happens to be Lost or Destroyed, it is of no avail, if there be no Entry, except there be sufficient Evidence that there was such a Writing or Contract, as also a Copy of it; but if it be a Publick Policy, then is the Entry sufficient as an Evidence or Testimony for this Court to take Notice of, and proceed upon; and so determine the Matter as they shall see Cause.

The manner of Insurance is of great Antiquity, being Projected and begun, for the Increase of Navigation, by *Claudius Caesar*, Emperor of *Rome*, and has ever since had wonderful Success in promoting  
Trade,

Trade, especially by way of Merchandize, and causing Adventurers to discover strange Countrys, and are either publick or private.

A publick Assurance must be entered in the Office of this Court kept upon the *Royal Exchange* in *London*, for the better conveniency of Merchants, to which they or others may resort, and so upon search be satisfied what Cargo or Ships are insured, and at what premio or rate.

As for private Assurance, that is commonly between Merchants and others, being as the former entered in the Office, and stands of equal force at Common Law by the Statute of 43 *Eliz.* but if not entered, they are not determinable in this Court, but result on the Common Law, and all of these are Good and of Force, some are made for Places general, others for Places certain, and the Port to be named. As for the first, it is when a Trading Voyage is made without any limited Place or Port certain, but the Ship takes in Goods at one Port and sells them at another, so that the Party undertaking such Assurance is obliged by the Policy to make good the Ship or Cargo, or such Damage as is sustained, according to the Agreement, till the Ship safely returns to the Port where she set out.

If it be to a certain Port, and if cast away in the Voyage, or any way miscarry before arrived at the Port agreed on, then to be made good by the Insurer, but if safely landed, the Premio to be pay'd upon the first Notice, if so agreed on, and the like upon Goods Inward bound, as agreed on.

You may also insure Goods sent by Land, tho' not so often practised on a Man going to Sea, and fearing to be taken a Captive by the Corsairs of *Barbary*, or any other Pirates, may insure his Person, and if taken, the Insurer is obliged to redeem him with as much speed as may be, viz. pay the Money insured for the paying his Ransom.

*The Chamberlains Court for Apprentices.*

Before the Chamberlain of London all Indentures of Apprentices are or ought to be Enroll'd, and if they be not Enroll'd, the Apprentice may Sue out his Indenture at his Discretion in this Court, and so be discharged from his Master ; and the Chamberlain is the Judge in all Complaints, either of Masters against their Servants, or Servants against their Masters, and to punish the Offenders at his Discretion ; and in this Court are all Apprentices made Free ; and to be made Free, there are three several ways, viz. 1. By Service, as an Apprentice. 2. By Adoption or Birth-right, as being the Son of a Free-man : And 3. By Redemption by the Order of the Court of Aldermen.

## C H A P. XLIV.

*The Constable, his Oath, and other things concerning his Office, &c.*

**T**HE Office and Duty of a High Constable, Petty Constable, Head-borough, Tithing-Man, &c. in the Discharge of the many weighty Affairs that they are obliged to undertake ; with safe Directions how to act on the several Occasions.

The High Constable is as it were Overseer or Director of the Petty Constables, Head-burroughs, or Tything-men, which are chosen under him, in the respective Towns, Villages, or Precincts within his Hundred, or such Franchises as are under his Jurisdiction, by the consent of the Inhabitants,

or the Majority of them, and their Duty it is to execute the High Constables Office in his Absence, in keeping the Peace and good Order in their respective Limits; and upon the High Constables Order, to be Aiding and Assisting to him so far as concerns his Office. And now since both these are Necessarily Sworn upon Entering on their respective Offices, it will be requisite for the better understanding of what they undertake, by entering on so Weighty a Trust, to set down the Form of their respective Oaths before the Justices, &c.

*The Oath to be taken by a High Constable.*

*You shall Swear that you shall well and truly serve our Sovereign Lady the Queen, in the Office of a Constable; you shall see and cause Her Majesties Peace to be well and truly kept and preserved, so far as in your Power lyeth; you shall Arrest all such Persons as in your Sight or Presence shall Ride, or go Armed Offensively, or shall commit or make any Riot, Affray, or any other Breach of Her Majestys Peace; you shall do your best Endeavour, upon Complaint to you made, to Apprehend all Felons, Barretors, and Rioters, or Persons Riotously Assembled; and if any such Offenders shall make Resistance with Force, you shall Levy Hue and Cry, and shall pursue them till they be taken; you shall do your best Endeavour that the Watch in and about your Hundred be duly kept for the Apprehending Vagabonds, Rogues, Night-Walkers, Eves-Droppers, Scouts, and other Suspected Persons, and of such as go Armed and the like; and that Hue and Cry be duly Rais'd and Pursued according to the Statute of Winchester, against Murderers, Thieves, and other Felons; and that the Statutes made for Rogues, Vagabonds, and such other Idle Persons, as come within*



within your Bounds and Limits, be duly put in Execution; you shall have a Watchful Eye upon such Persons as shall maintain or keep any Common House, or Place where any unlawful Game is, or shall be used; as also to such as shall frequent or use such Places, or shall use or exercise any unlawful Games there or elsewhere, contrary to the Statutes. At your Sessions, Assize, or Leets, you shall Present all and every the Offences done contrary to the Statutes of the 1. 4. and 21 of James the First, to restrain the inordinate Hunting and Tipling in Inns, Ale-Houses, and other Victualling Houses, and for the representing Drunkenness; you shall there likewise true Presentment make of all Blood-Sheddings, Affrays, Out-Cries, Rescours, and other Offences committed or done against the Queen Majesty's Peace within your Limits: You shall once every Year, during your Office, present at the Quarter-Sessions all Popish Recusants within your Liberty, and their Children above Nine Years Old, and their Servants, (viz. their Monthly Absence from the Church,) 3 Jacobi 1. Chap. 4. You shall well and duly Execute all Precepts and Warrants, to you directed from the Justices of the Peace of the County, or Superior Officers; you shall be aiding to your Neighbours against unlawful Purveyances: In time of Hay or Corn Harvest, upon request, you shall cause all Persons meet to serve by the Day, for the Mowing, Reaping, or getting in of Corn and Hay; you shall in Easter-Week, cause your Parishioners to chuse Surveyors for the Mending the High Ways in your Parish or Liberty; and you shall well and duly, according to your Knowledge, Power and Ability, do and Execute all other things belonging to the Office and Duty of a Constable, so long as you shall continue in the said Office.

By this Tenor of an Oath, a Constable may gain a considerable Light into what he is to do, in the Management and Execution of his Office; being as it were an Epitome of what I shall hereafter set down more intelligibly and plainly to be understood: But this Oath is often Administred in Abstract to a Petty Constable, Tything-Man, &c. So that what I now recite suffices.

*The Petty-Constable, &c. his Oath.*

*You shall Swear that you will well and truly Execute the Office of a Tything-Man, of the Tything of B. (or Head-Borough, &c.). Her Majesties Peace in your Person you shall keep, and see it kept in others as much as in you lyeth; in the Presence of the High-Constable, you shall be Aiding and Assisting to him, and in his Absence you shall Execute his Office, according to your Power and Knowledge, till another be Chosen in your Place, or you be Legally Discharged. So help you G O D.*

The High Constables in their respective Hundreds, are Conservators of the Peace at Common Law, as are the Petty Constables in their respective Towns and Liberties; and have a large Power, to back and support them in the Execution of their Office, if they proceed within the Bounds of it; for it is so ordered, that if an Action be brought against a Constable, Head-borough, &c. or their Assistants, for any thing done by reason of their respective Offices, they may plead the General Issue, and give the special Matter in Evidence, 7 Jac. 1. Chap. 5. 21. Jac. 1. Chap. 22. Wingate's Abridg. Stat. Tit. Evidence, &c. And if it so happen, any Action be brought against one or more of them, it is so provided, that it shall be layed in the County where the

Fact

Fact commenced, and if the Verdict pass for the Defendant, he is to have double Costs; and this to be recovered as other Defendants recover their Costs, by 7 *Jacobi 1. Chap. 5. 21. Jacobi Chap. 12. Wing. Abridg. Stat. Tit. Evidence.*

For indeed a Constable Legally Chosen, is compelled to serve the Office, being a fit Man, able of Body and in Substance; and it would go hard if for every Trivial Slip he should run the Risque of being ruined by Vexatious Suits; for if a Constable, &c. Legally Elected to the Office, do refuse to serve and take the Oath, unless a *Quaker*, and then, according to the late Statute for taking the Oaths, &c. his Affirmation will hold good in lieu of an Oath; he may be Bound over by the Justices, to the next Sessions or Assize, and there Prosecuted for a Contempt.

But passing over these, I come now to direct the Constable, &c. in the more Material Parts of his Office, wherein he may readily order and manage his Affairs, in discharge of his Duty, without running into Inconveniences or Hazards, that may bring Trouble and Charges upon him: For whatever the Fancy of some is, a *Constable* is no more a Privileged Man than any other, where he exceeds the Bounds of his Office, in unaccountable Actions. And the first Particular I shall offer, is his Duty in serving of Warrants directed to him by Justices in Commission for the Peace, or other Magistrates having Power to grant Warrants, and how far they may be Safe in this, and where he may Err.

C H A P. XLV.

*The Office and Duty of a Constable, Head-borough, &c. in Serving, or Executing Warrants directed to him by Justices in Commission for the Peace, &c.*

**I**F a Warrant be brought to a Constable, or other Sworn Officer, his safest way is to Charge the Party making the Plaint; to Assist him in the Queens Name, and shew him the Party, or Parties mentioned in the Warrant, unless himself be well acquainted with him, or them, lest a mistake by the Names agreeing, may run him into an Error, in taking the wrong Party; and if he be a Sworn known Officer, he may refuse to shew his Warrant; but must declare to the Party he goes to Arrest, what is therein charged against him; but it is otherwise where a Warrant is given to be served by one who is not a known Sworn Officer; as a Justices Servant, &c. For there, upon Demand, he must produce the Warrant, or the Party on whom it is Served may refuse to Obey, and Lawfully Resist.

If a Constable Arrest a Man or Woman in the Queens Name, pretending he has a Warrant, and at that time has none, but presently goes and gets one, the Party may bring an Action of false Imprisonment against him, and recover such Damages with Cost, as shall be Awarded, *Coke 6. 69.*

If a Constable have a Warrant against *A. B.* the Son of *L. B.* and he takes into his Custody *A. B.* the Son of *R. B.* though he happen to be the Offender against whom the Complaint was made,

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made, yet he goes from his Warrant, and doing thereby an unjustifiable Action, there lies an Action of False Imprisonment against him, 10 E.

4. Fol. 12.

If a Constable Arrests a Man with a Warrant from a Justice of the Peace, and having him in Custody, takes his Word to come again another time; by his so dismissing him, the Warrant is void, and cannot be Served again. But if a Rescue be made, or the Prisoner escapes without the Officers Consent, then upon fresh Pursuit he may take him with the same Warrant, as often as he is Rescued or Escapes, and may pursue him into another Town, or County, though he be out of sight, *Crompt. 214. a. and 184. Cro. 53. 14.*

If a Justice send a Warrant for a Matter wherein he hath Jurisdiction, though he goes beyond his Authority, yet the Officer is bound to obey it, and his producing his Warrant saves him harmless, the Justice being then to answer for it: but on the contrary, if a Justice issues out a Warrant for a Matter out of his Jurisdiction, where he is no Judge of the Cause, the Constable is not bound to Obey it; for he is bound to take notice of the Jurisdiction and Authority of the Judge; and where the Justice, as is said, can be no Judge of the Matter charged in the Warrant, he is no more bound to Obey him than if he had no Commission, 14 Hen. 8. Co. 10. 16.

If a Warrant be directed to an Officer to serve on a Person for Ordinary Matters, the Warrant not specifying the Cause, but only to answer to all such Matters as shall be objected against him or her; this is held to be an illegal Warrant, and the Officer that Executes it lies liable to an Action of

of False Imprisonment, *Cook's Institutes, part 4. Tit. de Frangent Prison.* However for reason of State Warrants for Treason, or such as are granted by the Lords of the Privy Council, Secretaries of State, or the Lord Chief Justice of England; these need not set forth the Cause, by reason they are usually granted on Matters of great Importance, where Secrecy is required.

If any Party be taken by a Legal Warrant, and make Resistance, the Constable in the Queens Name, may command Assistance; and if the Resisting Party be Beaten or Wounded, the Amends is in his own Hands, for Opposing the Queens Authority; but if the Constable, or any of his Assistants be Beaten or Wounded, the Party is Indictable, as likewise liable to an Action at Common-Law; and if any of them Die of the Beating and Wounds within 12 Months, it is Murther.

Persons refusing to Assist a known Sworn Officer, charging them in the Queens Name, lye liable to be Bound over to the Sessions, and Fined at the Discretion of the Justices; and the like for those that shall Contemn or Abuse a Justices Warrant, by Tearing, Treading under Foot, or any way Defacing it, &c. over and above being Bound to their Good Behaviour; for it is a Contempt against the Queens Process, *Crompt. 144.*

## C H A P. XLVI.

*The Office of a Constable, &c. How it ought to be Executed; relating to Affrays, &c.*

**I**F a Constable be present at an Affray, he may command the Standers by in the Queens-Name to assist him in keeping the Peace, and upon Complaint of the Constable, the Inquest may Indict the Party refusing, and be Fined by the Justices at their Sessions, for refusing to do his Duty.

If a Constable, or other such like Officer be present when one Man or Woman Assaults another, or with violent Words threatens to Beat or Kill any one, and be in a Fury, ready to break the Peace. In such case the Constable, Headborough, &c. may Commit the Offenders to the Stocks, or some other safe place of Custody, till he can carry them before a Justice, who may upon Complaint, compel them to find Sureties for the Peace, or good Behaviour; and for want of such Sureties, Commit them to Prison. 3 *Hen.* 4. 9 and 10. *Bacon's use of the Law, &c.*

Where any Affray is like to be, the Constable in the Queens Name may command them to depart on pain of Imprisonment; and if they refuse, he may take them into Custody, or Indict such as refuse, if any harm be done, at the next Sessions; and if a Constable be present at an Affray, and does not his Endeavour to prevent it, and Seize the Offenders, he lies liable upon a Presentment of the Jury to be Fined; *Dagon's Justice of the Peace. C. 1. Folio 4. 5.*

A Constable may resist the Affrayers after Proclamation made to depart, and compel them  
to



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to it by force, and if he, or any of his Assistants be wounded, they have their Remedy by Statute and Common-law, and if killed, or dying of their Wounds, it is Murther in the Affrayers, *Lamb.* 135. 1 *Hen.* 7. 7. 3 *Hen.* 7. 10.

If the Affrayers be in a House, the Doors locked or bolted, the Constable may break them open to part the Affray, and keep the Peace, though none have taken hurt; and if they fly into another House, the Constable upon fresh Pursuit may break into that House to apprehend them, and so till they shall be taken, *Lamb.* 125. 7 *Edw.* 3. 19.

If any be dangerously hurt in an Affray though the Constable be not present at the Affray, yet may he seize the Offenders, and carry them before a Justice of the Peace, who is to require Sureties of them, or the Wounds being supposed mortal, to commit them to Prison, till it be certified by Chyrurgeons or Physicians, whether the Party will live or die, *Dalt. Just. P.* c. 8. *Fol.* 33.

After the Affray is over, the Constable not being present at it, cannot seize them without Warrant, unless some one be dangerously wounded, and much Blood drawn. If Affrayers escape into another County, or Franchise, a Constable upon fresh pursuit may seize them there, and carry them before a Justice of the Peace of the same County, to find Sureties for the Peace; but then he must see the Affray.

All Contests are not properly Affrays; for to make it such there must be some Blows given, or offered to be given; for hasty Words will not warrant an Affray, unless they threaten to Beat, Kill, or Wound one another; and in such Case a Constable may apprehend the Offenders, and carry them before a Justice, to find Surety for the Peace

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Peace; and yet such threatning Words are not properly taken for an Affray, *Dalt. Just. P. c. 8. Fol. 34. 38. Hen. 8.*

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C H A P. XLVII.

*The Constables Office relating to Arrests, or Escapes of Prisoners, Felons, &c.*

**U**Pon a Constable, or any Sworn Officer of the Peace, having Arrested a Felon, or taken any Person into Custody on Suspicion thereof, and he is conniving at his Escape, or giveth him leave to go out of his Custody at Liberty, so that he does Escape, it is no Felony in the Prisoner, but it lies upon the Constable, and he must answer for it; but if the Prisoner accidentally Escape without the Constables Consent, he is then Guilty of Felony, and the Constable Fineable for his Negligence.

If a Constable by his Negligence let a Prisoner in his Custody have Opportunity to make away with himself, by Stabbing, Drowning, or any violent Death, he is Fineable, *Dalt. Just. P. c. 1. 6. Fol. 272.*

Where a Felony is committed, and one is taken by a Constable on Suspicion of committing it, though afterward the Constable be very well satisfied he is innocent, yet he may not discharge him without carrying him before a Justice of the Peace; for being once taken into Custody, he must be delivered by due course of Law; nor may a Constable suffer the Compounding any Felony: or if it be done after he Arrests the Party, or before, he is to declare his Knowledge, of such Compounding before the Justice, or for  
Com-

Conniving to Extenuate the Fact, and set the Prisoner at Liberty, he is Fineable; and some hold he may be brought in as an Accessary.

A Constable may use all lawful Means to secure his Prisoner, as setting him in the Stocks, or putting Irons on him, if he be unruly, till he can carry him before a Justice; or Pinion his Hands behind him with Cords, to prevent his Escape in carrying him thither, or to Prison.

If the Goaler will not receive a Prisoner of a Constable, where he is lawfully committed, he must not however let him go, but bring him back to the Town or Village where he was taken, or where the Constable dwells, and the Town where he was taken shall be at the charge of keeping him until the next Goal-delivery, to be raised by way of Tax among the Inhabitants, if the Prisoner has no Money or Goods to defray it; and in such Case the Goaler shall be punished by the Justices in their Sessions or Assize, for his Refusal and Contempt. If there be much Charge in carrying a Prisoner to Goal, the Inhabitants where he was taken may be obliged to contribute to it, to be Levied by such of the principal Inhabitants as shall be thereunto appointed at their Discretion.

## C H A P. XLVIII.

*The Office of a Constable, &c. In Relation to Hue and Cry, and how he must discharge his Duty therein.*

**W**hen a Hue and Cry is Levied and Issued out, whether for Robbery, Murder, &c. when it comes to the Hands of a Constable, Head-borough, Tything-man, &c. They must

must forthwith make diligent Search in all suspected Houses, Barns, and Out-houses; and other Houses at their Discretion, and all places within their Liberty or Precincts, and have Power to stop any Suspected Persons, as in Search or Pursuit they shall find or suspect to have done the Fact, comparing him or her, or their Horses, with the Description given in the Hue and Cry, and if Cause be found to carry the Party before the next Justice of the Peace in the County where taken, there to be strictly Examined where he or they were at the time of the Fact committed, and for the neglect of this Duty, the Officer lies liable to be Fined by the Justices in Sessions, and search being diligently made, must without delay send it to the next Constable or Officer of the Peace, unless the Party or Parties be taken who are known to have committed the Fact mentioned therein, *Dalt. Just. P. c. 28. Fol. 75.*

Where a Robbery is committed in a Hundred, and the Hundred is sued for it, though the Damages are recovered against one or two of the said Hundred, yet they are not to bear the Charge, but the rest must proportionably contribute according to their Ability; and two Justices of the Peace, one to be of the *Quorum*, dwelling in or near to the said Hundred, may set a Tax on every Parish within it, and then it is the Duty of the Constable or Tything-man of each Parish to settle the Gross Tax proportionably on the Inhabitants in particular, and may upon refusal of Payment, make Distress and Sale of Goods, delivering the Overplus on due Appraisement to the Owner; and the Money so collected is to be put into the Hands of the Justices, or some of them that made the Rate, within ten Days after, according to 27 *Eliz. Chap. 13. &c.*

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If fresh pursuit on the Hue and Cry shall cease in any Hundred, it is lyable to pay half the Damages to the Hundred wherein the Robbery was committed, to be recovered by Action in any of her Majesties Courts at *Westminster*, at the Suit of the Clerk of the Peace for the County; and though in the mean time he die or be changed, the Suit shall not fall or abate; and when so recovered, it is to be levied on the Inhabitants by way of Tax as the former, 27 *Eliz. Chap. 13.*

If any one of the Robbers be apprehended, and brought to Justice and Convicted, it saves the Hundred their Money, because it is looked on they have Regard to Watching the Roads for the secure Travelling of Passengers. Also when the Action is not brought within one Year after the Robbery committed.

The Robbery must be Committed in the Queens High-way, between Sun-rise and Sun-set, and Oath made of it, with the Summ lost, before the next Justice of the Peace, with all convenient speed. The Hue and Cry thereupon issued out, must be made with Horse and Foot, or else it is held Illegal, *Bracton, Book 3. Folio 121. Dalton Just. P. Fol. 133.*

Who so goes not Armed, and fitly prepared, at the Command of the Sheriff or Constable, when the Hue and Cry is issued, (to Arrest the Robbers or Felons) after attainder may be severely Fined and Imprisoned, *Westm. Chap. 9. Coke second part of Institutes, Folio 172.*

CHAP.

## C H A P. XLIX.

*The Constables Office, &c. In what more particularly relates to the Conservation of the Peace.*

**T**Hough a Constable may do his Endeavour to keep the Peace, yet if it be broken, he cannot take Surety for it at the Request of any one, *H. 7. Fol. 18.*

Before a Warrant of the Peace be served, the Constable or other Officer ought to acquaint the Party with it, and charge him in the Queens Name to go along with him to put in Sureties, if required ; and if he refuse so to do, then to compel him to do it ; and if it be an unseasonable time, that the Justice be in Bed, or not to be found, he may secure him under a Guard, or in Prison, if he will be so rigorous, till he can Convey him before a Justice, and is not Bound to run up and down from place to place with him, nor lose his Time, in staying till the Prisoner can send for Sureties, but may immediately carry him before what Justice he pleases, and not submit it to the Prisoners Election, nor to that of the Party that makes the Complaint, unless the Warrant be Special, of which Particular I shall speak more fully in another place.

If a Constable have a Warrant of the Peace against a Person to find Sureties, where the matter is palpable, the Party having notice of it, may supersede it, by putting in Surety before another Justice, to answer the complaint the next Sessions, and then if that Justice, being of the same County, send a Superseas to the Officer to discharge further Surety, and he notwithstanding Arrest the Party to find Surety, or Imprison him, he may bring his Action of False Imprisonment against the

the said Constable, or for the like Contempt of the Officer upon a Superfedeas out of Chancery, or the Queens Bench; for a Superfedeas is a Discharge of the former Warrant, *Dalt. Just. P. Chap. 69. Folio 158.*

Upon Notice given to a Constable, or other Peace Officer, or if it be upon his or their own Knowledge, that a Man or Woman, Adulterously Cohabit together, or live in Fornication, being of evil Report, he may search any suspected House for them, wherein he is inform'd, or knows they are in the Night-time; and there Apprehend them, and carry them before a Magistrate to find Sureties for their Good Behaviour, *13 H. 7. 10. Dalt. Just. P. Chap. 75. Folio 189.*

If any one Abuse, or Affront a Constable in the Execution of his Office, either by Word or Action, he may have him Bound over to the Good Behaviour for such his Offence, and Fined before the Justices in their Sessions, as they see fit upon proof, *&c. Fitz. 207. Crompt. 135.*

All Injurious Force and Violence, used against the Person, Lands, Goods, or other Possessions or Chattels, of a Man or Woman, is held a Breach of the Peace, whether it be by Threatning Words, Furious Gestures, or Bodily Force, *Dalt. Chap. 3. Fol. 9.*

*Note,* upon any Disputes in an Alehouse or Tavern, *&c.* about paying the Reckoning, and the Parties offer to make their Escapes without paying, if there be no Swords drawn, Beating, Wounding, or visible Breach of the Peace, the Constable is not Bound to go, though sent for, nor is it Warrantable for him to Arrest and carry them before a Justice, unless a Warrant be put into his Hand; for this is only a Debt, and the Party aggrieved must bring his Action, for the Credit he gave for the Victuals or Drink, *&c.* being freely



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delivered by his Consent, and those Constables that are over Officious to trouble themselves this way, may bring themselves into Trouble, and only be Laughed at by those that set them on Work, and counted their Stalking Horses.

No Warrant, Writ, or Process, shall be served on the *Lords Day*, commonly called *Sunday*, except for Felony, Treason, or the Breach of the Peace; for otherways the Service shall be void, and the Justice may discharge the Warrant without Examining the Parties; and the Party serving it shall be obliged to answer Damages, as if no Warrant had been, to the Party who is Arrested and detained by such a Warrant on the *Lords-Day*, 29 *Caroli* 2. *Chap.* 7.

### C H A P. L.

*The Office of a Constable, &c. relating to the strict Observance of the Lords-Day.*

**I**F any Butcher Kill, and Sell any Victuals on the *Lords Day*, or any one do it for him, the Constable by Distress and Sale of his Goods, may Levy Six Shillings and Eight Pence upon Warrant from a Justice, &c. But the Complaint or Information must be made within six Weeks, and the Party thereof Convicted before a Justice of Peace, Mayor, or chief Officer, upon their own View, Proof of two Witnesses, or the Parties own Confession; and they may at their Discretion, gratifie the Informer with the third part of the Penalty; 3 *Car.* 1. *Chap.* 1. *Daltons Just. P.* *Chap.* 50. *Pol.* 135.

If any one on the Lords Day be present at, or keep any Shooting, Wrestling, Ringing of Bells for Pleasure, Bowling, Church-Ales, Wakes, Masks, or any Games, Sports or Pastimes whatsoever, they shall forfeit Five Shillings, if above the Age of 14, if under that Age 1 Shilling, to be paid by him, or her that has the Government of the Party, to be Levyed by the Constable on Sale of Goods taken in Distress, by Warrant from a Justice of Peace or Chief Magistrate, and for want of such Distress the Offender to be set in the Stocks for the space of 3 Hours: And any Carrier going by way of Travelling with his Horse on this Day, or any Carrier, Waggoner or Wayn-man going with any Cart, Waggon, Wayn, or Drover with Cattle, Forfeits 20 s. for every such Offence, to be Levyed by Distress and Sale of his, or their Goods, if charged and duly convicted within six Weeks after the Offence committed, as in the Case of Butchers, and the Money shall be had to the use of the Parish where the Distress is first made; for though they pass through several Parishes, yet they are to pay but 20 s. for one Journey, 3 Car. 1. Chap. 1. Dalt. Chap. 50. Folio 134.

If any Bull-baiting, or Bear-baiting, Enterludes, or other unlawful Games and Pastimes of the like Nature, be held in the Parish or out of the Parish on the Lords Day, upon Warrant to him directed, the Constable, &c. may Levy 3 s. 8 d. by Distress and Sale of the Offenders Goods, rendering the Overplus to the Owner, if any be; or set the Party for want of such Distress in the Stocks by the space of 3 Hours, but then the Party offending must be questioned within the space of a Month after the Offence committed, 1 Car. 1. Chap. 1. Dalt. Just. P. Chap. 23. Folio. 6.

None shall do any Work by Labour or Business on the Lords Day, Works of Necessity and Charity only excepted, but that the Offender if above the Age of 14 Years, or upwards, shall forfeit 5 s. None shall cry and expole to Sale any Wares that Day, on pain to forfeit them, except Milk, and that before Nine in the Morning, and after Four in the Afternoon. No Drover, Higler, Horse-courser, Butcher, or their Servants, shall Travel on the Lords Day, upon pain of forfeiting 20 s. No Person shall Travel on this Day on Horseback, or with Boat, or Wherry, unless on extraordinary Occasions, to be allowed by a Justice of the Peace or Head Officer of the place, under penalty of forfeiting 5 s. No Hackney Coaches to Travel that day, unless such as are allowed by the Act of His late Majesty King William the Third, &c. for Licensing Hackney Coaches, &c. 29 Car. 2. Chap. 7. And Penalties upon this Act are for the use of the Poor of the Parish where they are levied, or the Offence committed, saving the Justice or other Head Officer may reward the Informer if he think fit, with a Third part. And further note, that the Prosecution of this Act must be made within 10 Days after the Fact committed.

Dressing Meat in Inns, Cooks Shops, and private Families, are not prohibited on the Lords Day, by the Statute of 29 Car. 2. And for the better encouragement of the Mackarel Fishery, they are in the Season to be Sold on this Day, but before and after Sermon only.

C H A P. LI.

*The Office and Duty of a Constable, &c. required about hired Servants, Labourers, &c.*

**I**F Labourers are wanting in Harvest or Hay time, the Party so standing in need, may require the Constable to cause such Persons as he thinks fit, to Mow, Reap, or do any Work relating to getting in the Hay and Corn Harvest, and they to be paid by the Day, according as they are able to perform; and if they shall refuse to work after they are requested thereunto by the Constable, he has Power to set them in the Stocks by the space of two Days and one Night, and upon the Constables neglect to perform his Duty in this Case, he forfeits 40 s. *5 Eliz. Chap. 14.*

Servants, &c. After the time of their Work be expired, they being employed in Husbandry, or any Arts appointed in that Statute, they shall not depart the Parish, City or Town where they last served, to any other, without a Testimonial, (that is) in a Town Corporate, under the Hand and Seal of the Chief Magistrate and two Housholders there, and in the Country, under the Hands and Seals of the Constable or other Officers, and two Housholders of the said Town or Parish where he or she last served; and the Minister is to receive Two Pence for Registering the said Testimonial, which is to be delivered by him to the Party whose Name is mentioned therein, according to the Statute of the *5 Eliz. Chap. 5.* and the Testimonial is to run in this Form.

*The Form of a Testimonial, &c.*

*Memorandum*, That *John Digs*, Servant to *James Dillion* of *Strettham*, in the County of *Surry*, *Grazier*, is licensed to depart from his said Master, and is at full Liberty to serve elsewhere, according to the Statute in that Case made and provided; in Witness whereof we have hereunto set our Hands and Seals on the 28<sup>th</sup> of *July*, in the 7<sup>th</sup> Year of the Reign of our Gracious Sovereign Lady Queen *Anne*, and in the Year of our Lord 1708.

*James Wade*, Constable of *Strettham*.

*Richard Tims*, }  
*John Nobs*. } Householders there.

If the Party lives with a Widow or any single Person, then instead of Master set down Mistress, or Dame, with the Womans Name, and the Name of the Servant, be it Man or Maid Servant, or what else they term themselves; and if the Parties they live with be Handy-crafts, or any other Calling, their Calling, with their Names, and the place of Abode, must be set down and testified in all respects, as aforesaid.

He or She that entertains any Servant without such a Testimonial, forfeits Five Pounds, being lawfully Convicted upon Indictment before the Justices in Sessions, and every Servant not producing such a Testimonial to the Mayor, Constable, Church-warden, Minister, or other Officers impowred to inspect it, may be imprisoned till such a one be procured; and if he or she procure not one in 21 Days ensuing the Day of Imprisonment, or produce a false and Counterfeit one, he

he or she so doing is to be Whipt, and used as a Vagabond, 5 Eliz. Chap. 4. Dalton Just. P. Chap. 31. Folio 63. And this Statute relating to Testimonials, was punctually observed; tho' of latter days it has not been much regarded, that People taking Servants at they knew not what Hand, have been frequently Robbed by them, not knowing afterwards where to find them, or enquire after them; and therefore it would be well if it was yet strictly kept in use; and indeed the Penalties are in as much force to be inflicted as ever.

## CHAP. LII.

*The Office of a Constable, as to what he is to do relating to Popish Recusants and Conventicles.*

**A**N Y one exceeding Sixteen Years of Age, being a Popish Recusant, must within Forty Days after Conviction, repair to their usual and known Dwellings, and not to remove five Miles thence, under Penalty of forfeiting all their Goods, Lands and Chattels, Annuities, &c. during Life; and if they can Assign no certain place of Abode, then are they to repair to the place of their Birth, or where their Father or Mother dwell, if they are Living; and in 20 Days after their Arrival, give in their Names to the Minister, Constable, and Headborough in Writing, which Minister is to enter them in a Book to be kept for the purpose, and he with the said Officers are to Certifie the same the next Quarter-Sessions, where the Justices of Peace are obliged to cause the same to be Introlled, 35 Eliz. Chap. 2. Wingates Stat. Title. Crown.

Note, that the Church-Wardens and Constables of every Parish, or one of them; and where there

are none such, the High Constables of the Hundreds are every Year, once in the Year, at the General Sessions held for the Peace, to present Popish Recusants for their Monthly Absence from Church, and return the Names of their Children above Nine Years of Age, being then with their Parents; also their Servants, together with the Age of their Children, as near as they can compute, or to Forfeit 20 s. for every such Default; which Presentments the Town-Clerks, or Clerks of the Peace are to Record, without taking Fees for them, under a Penalty of 40 s. 3 *Jacobi* 1. *Chap.* 4. *Wingates Statutes, Tit. Crown.* And if the Minister, Petty Constable, and Church Wardens of any Parish, shall make a Complaint to the Justice of Peace, that he or they suspect such a one to be a Popish Recusant, but have no Proof of it, then the Justice may tender the Party the Oaths in that case appointed; and upon Refusal, if above the Age of 18, he may Commit the Party to Prison till the next Assize, and then if again refused, it is a Premunire in a Man, but a Woman Covert shall only Suffer Imprisonment, and remain without Bail till She take the Oath of Allegiance, &c. 7 *Jacobi* 1. *Chap.* 6. *Wingates Stat. Tit. Crown. Dalt. Just. P. Chap.* 45. *Fol.* 108.

By a Statute, the first of *William and Mary*, no Papist, or Reputed Papist, refusing to make and subscribe the Declaration they are obliged to by the 30 *Caroli* 2. And the Oaths enjoyned in an Act for removing and preventing all Questions, &c. about the Assembling, and Sitting of this present Parliament, shall at any time after the 15th Day of *May*, 1689. have, or keep in his own Possession, or at his Disposal, any Horse, or Horses valued above Five Pounds, they are to be Sold; and that any two or more Justices of the



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Peace, by a Warrant under their Hands and Seals, may or shall Authorize any Person, or number of Persons, assisted by a Constable, or his Deputy, Head-borough, or Tything-man, who are herein required to be aiding and assisting, to search for, and seize to the use of her Majesty and her Successors, all such Horses above five Pounds value, as aforesaid.

And further note, that upon any time a Proclamation being issued out to remove Papists at a distance from the Cities of *London* and *Westminster*, other Cities and Towns Corporate; the Constables by Warrant from the Justices of Peace, are to make diligent search, and give in the Names and places of Abode of such as stay beyond the time limited; that so they may be prosecuted for their Contempt.

And note, that ignorant Persons may not be mistaken, by bearing too much upon the Act made in the first Year of K. W. Q. M. for Exempting their Majesties Protestant Subjects Dissenting from the Church of *England*, from the penalty mentioned in the 35 of *Elizabeth*, and the 22 *Caroli* 2. It is thereby Enacted, That all Persons that take the Oaths, and make and subscribe the Declaration therein mentioned, shall not be liable to the Penalty of the two former penal Acts against Conventicles. However, if any such Assembly of Persons Dissenting from the Church of *England*, meet for Religious Worship, with the Doors Locked, Barred, or Bolted, during any times of such Meeting together, all and every such Person, or Persons that shall come to, and be at such Meeting, shall not receive any Benefit from the New Law, but be liable to all the Pains and Penalties recited in the Statute of 35 *Eliz.* and 22 *Car.* 2. for such their close and concealed Meeting.

And further, if any Person differing from the Church of *England*, a Protestant Dissenter, shall be chosen to the Office of High Constable, Petty Constable, Church-warden, or Overseer of the Poor, or any Parochial, or Ward-Office, any such Person that shall scruple to take upon him any of the said Offices, in regard of the said Oaths, or any other Matter or Thing required by the Law to be taken or done, in respect of such Office, may execute the said Office or Offices by a sufficient Deputy by him to be provided, that will comply in taking the Oath, &c. and such a one as shall be well approved.

Note that the People called Quakers, in Case of Oaths, may tender their Affirmation, by Virtue of a late Act of King *William* the Third, and that in Breach of such Affirmation they incur the Penalties, as in case of Perjury.

### CH A P. LIII.

*A Constables Office relating to such as shall disturb Ministers in time of Divine Service, &c. And what relates to Physicians.*

**T**O keep Peace and Decency in Churches, Chappels, and such like places of Divine Worship.

Note, that if any one, not having Authority to do it, shall disturb a Preacher Lawfully Licensed, Preaching, Praying, or at the Administration of the Sacrament, either by entering into Dispute, Humming, Talking, Laughing, or any voluntary Disturbance, in Ridiculing, &c. Any Constable or Church-warden of the place is Authorized immediately to apprehend him or her  
so

to offending, and carry the Party before a Justice of the Peace of the same County, who may commit the Offender to safe Custody, and within six Days, Conjunct with another Justice of the Peace examine the Matter, and if it be evidently proved by two Witnesses, Commit him or her to the Common-Goal, there to remain by the space of 3 Months, and from thence to the next Quarter Sessions; where upon the Offenders Reconciliation, and entring into good Security for his good Abearing by the space of one whole Year, he may be Released; but upon standing in Contempt, and remaining Obstinate, he shall be continued in Prison without Bail, till Penitent;  
*1 Mary 1. Sess. 3. Chap. 3. Wingate's Stat. Tit. Sacraments, &c.*

And any one Rescuing such an Offender, shall suffer the like Imprisonment; and over and above forfeit 5 *l.* And the Inhabitants suffering such an Offender to escape, upon Presentments before the Justices in their Sessions of the Corporation or County, by the Authority aforesaid, are liable to forfeit five Pounds.

In the City of London, and seven Miles adjacent, the Constables and other Officers are to be Assisting to the President of the Physicians Colledge, in order to the due Execution of the Laws and Statutes belonging to the said Colledge, on pain of a Contempt against the Queens Majesty, according to the Statute of *1 Mary 1. Sess. 2. Chap. 9. Wingate's Stat. Tit. Physicians, &c.*

*The Duty and Office of a Constable, in any Calamitous Time of Plague and Pestilence, &c.*

**I**F Persons Infected with the Plague, be by the Constable commanded to keep their Houses, and yet Contemptuously go abroad and Converse with other People, then having the Plague sore upon him or her, it is Felony; and if Infected, and not having the Plague Sore, yet for such Offences they are liable to be punished as Vagabonds, by the Order or Appointment of a single Justice of Peace, and further be Bound to the Good Behaviour for the space of one whole Year upon proof of the Infection at the time he or she so offends, 1 Jacobi 1. Chap. 13. Wingates Stat. Tit. Plague. Dalr. Just. P. Chap. 39. Folio 91.

If a Constable, or such other Officer whom it concerns, shall neglect, or willingly refuse to Levy the Money by Warrant under the Hands and Seals of two Justices of the Peace, upon the Statute for the Relief of any Town or place Infected with the Plague, by Distress and Sale of the Goods of such persons as neglect, or refuse to pay, on such emergency for every such Offence, the said Officers are liable to forfeit Ten Shillings, to be distributed among the Sick, as by that Statute is directed, 1 Jacobi 1. Chap. 13. Dalr. Just. P. Chap. 39. Folio 91. Wingates Stat. Tit. Plague.

The Justices of Peace, one, or more of them, are to appoint in their several Limits, Watchmen, Keepers, Searchers and Buryers; as likewise may the Head Officers in Towns and Corporations do the same. And if any Infected Person, contrary to the Commandment of the Justice,

Constable, or other Head Officer, &c. shall willfully attempt to go abroad, and resist their Keepers, or Watch-Men, they may restrain them by Violence, and compel them by Force to keep their Houses; and if they be Hurt or Wounded, the Watch-Man shall not be troubled for it, because it was their Duty after such Warning, to have kept their Houses, 1 Jacobi 1. Chap. 13. Crompt. 122. &c. Dalt. Just. P. Chap. 39. Folio 91. Wimgates Stat. Tit. Plague.

## CHAP. LV.

*The Office of a Constable, &c. relating to Routs and Riots, and what they are.*

**T**HE power of a Constable in Disorders of this Kind is very great, and it is his Business to be diligent in suppressing them; as also that of the Sheriffs, and others the Queens Officers, by reason such Tumults are of dangerous Consequence to the Government; and many times, as it has been known, from small beginnings, broke into Open Rebellions, and disturbed the Peace of the whole Kingdom; and therefore,

*Note,* where three or more Persons shall Meet and Assemble themselves together, to the intent to do any unlawful Act, with Violence or Force against the Person of another, his Possessions or Goods; as to Beat, Kill, or otherwise to hurt, or without Authority to Imprison a Man in his own House, or elsewhere. To pull down a Wall, Pale, House, Hedge, Ditch, or wrongfully to enter upon, or into the Possession of another Mans House or Land, &c. Or without Right, to cut or take away Wood, Corn, Grass, or other Goods, or unlawfully to Hunt in any Warren,

or Park, or with Force or Violence do any other unlawful Act against the Queens Peace, to the manifest Terror of the People. And if they only meet to such Intent or Purpose, though they afterwards depart of their own accord, without putting their Intentions in Execution; it is nevertheless an unlawful Assembly, by reason their first Intention which occasioned them so to Assemble, was with an evil Design, *Bro. Tit. Riots* 4. 5. *Co. 3. Part Institutes, Folio 176. Dalt. Just. P. Chap. 85. Folio 217. Stat. 27. Rich. 2. Chap. 8.*

## C H A P. LVI.

*The Office of a Constable, in what concerns it relates to Rogues, Vagabonds, sturdy Beggars, &c.*

**T**O disencumber the Kingdom of lazy Persons who Loyter about, and decline Working, in expectation to live upon others Labours, by begging or pilfering, the Law has in the following manner provided against such Nufances. Therefore,

The Constable, Head-borough, or Tything-man, assisted by the Minister, and one other Inhabitant of the Parish, may take any Rogue, or sturdy Beggar, Vagabond, &c. they shall find Loytering up and down in their Parish, or Precinct, and strip him or her naked from the middle upwards, and whip, or cause to be whipped openly, the said Rogue or Vagabond till the Body be bloody, and then forthwith be sent away from Parish to Parish, or Tything to Tything, the next strait Way guiding or leading to the place of the Birth of such Vagrant; and if that

may

may not be known, then to the place where he or she last Inhabited, or resided by the space of one whole Year before such Punishment Inflicted; and if that be unknown, then to the Town through which the Party last past unpunished; and being there, if it cannot be discovered where the Party was Born, or last dwelt, then the Constable of that Town or place, is to convey him or her to the House of Correction, or Common-goal of the County, there to be employed at hard Labour, or put to Service for the space of one Year; and if disabled by Age or Casualty, as maiming, &c. and so not fit for Labour, that Town is to be at the Charge of keeping the said Vagrant till such time as he may be placed in some Alms-house within the County, by 39 Eliz. Chap. 4. *Wingate's Stat. Tit. Vagabonds, Bull. 2. part Reports, Folio 257. Resol. Judges, Sect. 417.*

It is further provided, that after such punishment is inflicted; that the Vagrant shall have a Testimonial under the Hand and Seal of the Constable, Tything-man or other Officer, subscribed also by the Minister of the Parish, testifying the place and day of such punishment being inflicted, and the time he is to have in going to the place to which he is directed; and if he or she Loyter by the way till the time is out, such punishment may be again inflicted, and so as often as the Default is made, till arrived at the limited place; and such Testimonial, especially in Substance, is to be registred by the Minister in a Book kept for that purpose, or in defect he to forfeit  
§ s. *Dalt. Folio 129.*



## C H A P. LVII.

*A Copy of a Testimonial in Manner and Form, as in this Case the Law directs.*

**N. T.** A Sturdy Vagrant Beggar, Aged about Thirty Years, of middle Stature, black Hair, fresh Coloured, and round Visaged, with a Cut on his left Cheek, was this 26 Day of June, in the 6th Year of the Reign of our Gracious Lady Queen *Anne*, &c. openly whipt at *D.* in the County of *C.* according to the Law, for a wandering Rogue and Vagabond, and is assigned to pass forthwith from Parish to Parish by the Officers thereof, the next straitway to *L.* in the County of *M.* where he declareth himself to be Born; and he is limited to be at *L.* aforesaid within 14 Days next ensuing the Date hereof, at his Peril. Given under the Hands and Seals of

*James Forbs*, Minister,  
and

*Timothy Darcy*, Constable of *D.*

This may be granted also by a Justice of the Peace alone under his Hand and Seal.

And if the Act of the Thirty-ninth of *Elizabeth* be neglected in the Execution of it, by any Constable, Tything-man, Head-borough, &c. he so neglecting forfeits 10 s. for every Default, and he that hinders any Execution of this Law, upon Rogues, and Vagabonds, incurs the Penalty of five Pounds, and may be bound over to their good Behaviour: And if a Constable or Peace Officer

Officer who ought to do it, refuses such Rogu<sup>e</sup> or Vagabond, or if he does receive him and doe<sup>s</sup> not carry or send him to the next Constable, in order to his being sent to the place appointed, he Forfeits for every such Offence Five Pounds, and the Justice furthermore may bind him over to his Good Behaviour, 39 *Eliz. Chap. Dalt. Chap. 47. Folio 128. &c.*

If any such Sturdy Rogue or Vagabond, shall come Begging to any House, the Owner of it seeing it, is to Apprehend Him or Her, and deliver the Offender to the next Constable, or else he Forfeits Ten Shillings, and the Constable is to Whip and Convey such Rogue as before directed, under the Penalty of 20 s. 1 *Jacobi (1) Chap. 7. Dalt. 147. Folio 128.*

Two Justices of the Peace, one to be of the *Quorum*, may by Warrant under their Hands and Seals, cause to be Levied by Distress and Sale of the Offenders Goods, all Forfeitures and Fines before mentioned, the Party being first Convicted either by his own Confession, or the proof of two Witnesses before the said Justices, 39 *Eliz. Chap. 4. 1 Jacobi (1) Chap. 7. Dalt. Chap. 4. 47. Folio 149.*

Constables, Head-boroughs, or Tything-Men, neglecting to make Search for Rogues or Vagabonds, upon the Justices Warrant directed to them, or to appear at their Meeting, to give up their account what Rogues, &c. they have punished, or sent to the House of Correction, or upon neglect to send such to the House of Correction, as by Order of Warrant are Committed, the Justices at their Discretion may Fine those so Transgressing, in a Summ not exceeding 40 s. 7 *Jacobi (1) Chap. 4.*

If any one not being an Officer, shall Apprehend a Rogue or Vagabond, and carry him be-  
fore

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fore a Justice of the Peace, the Justice has Power to reward the said Person, by granting to him a Warrant under his Hand and Seal to the Constable or Tything-Man of the Place, through which he passed unapprehended; ordering thereby the said Officer to pay 2 s. for every Rogue so Apprehended; and upon Refusal of Payment, the Justice may proceed against the Officer, pursuant to the Statute 1 *Jacobi* 1. Chap. 7. and constrain him to pay his Forfeiture limited by the same Statute, and out of it to allow the said two Shillings, with Charges for loss of Time, as to him shall seem meet, 1 *Jacobi* (1) 7. 14 *Caroli* 2. Chap. 12. And considering Constables, Tything-Men, &c. are at much Charge many times, in rebearing and carrying with Passes such as come to their Hands, the Church-Wardens, Overseers of the Poor, and other Inhabitants, may make a Rate to Tax the Inhabitants of the Parish, who are lyably chargeable, by the Statute of the 43 *Elizabeth*, to be confirmed under the Hands and Seals of two Justices of the Peace; and upon refusal of any to Pay, the Constable may by Warrant Levy it by Distress and Sale of Goods, returning the Overplus to the Owner if any such there be, 4 *Caroli*. 2 Chap. 12.

As for Rogues, or Vagrants of both Sexes, they are under several Circumstances or Denominations, and that an Officer may know who are such, and who not, viz. All Scholars and Sea-faring Men that Beg, all wandring Persons that use unlawful Games, Subtil Crafts or Plays, and such as pretend to have Skill in Physiognomy, Figure-Casters, or Fortune-Tellers; all Froccors, Patent-Gatherers, unless such as are impowered to do it by Letters Patents under the Great Seal, upon the account of Losses by Fire; all Collectors for Goals, Prisoners, or Hospitals, wandring abroad on that Oc-

● casion,

caſion, without ſufficient Warrant to authorize them : All Fencers and Bearwards, Common-players of Interludes, Minſtrels, Fiddlers, if ſo they be found wandering abroad.

All Labourers that wander abroad without the Limits of their reſpective Pariſhes, and reſuſe to work for ſuch Wages as ſhall be reaſonably taxed, having no other viſible way to maintain themſelves, all ſuch as go with general Paſports not directed from Pariſh to Pariſh.

All Juglers, and ſuch as uſe Tricks by ſlight of Hand, Artiſts, Tinkers, Pedlers, and Petty-Chapmen ; alſo Glaſs - Men wandering abroad unknown, and without a ſufficient Teſtimonial, all thoſe that counterfeit themſelves *Egyptians*, not Felons upon the Statute made in that caſe, all Perſons delivered out of Goal, that wander, begging for Fees, or otherways begging ; all ſuch as paſs and repaſs to and from the Bath for the recovery of their Health, not purſuing their Li- cenſe ; all Soldiers and Marriners that beg, and counterfeit a Certificate of their Commanders, that is to ſay, either Male or Female, being above 7 Years, and ſo tranſgreſſing as aforeſaid, and thoſe if they do not beg, yet if they wander and loiter about without any Paſport or ſufficient Teſtimonial, are accounted Rogues and Vagabonds ; thoſe that beg in their own Pariſh, or in the High-ways, without the Appointment or Li- cenſe of the Overſeers, are liable to be ſent to the Houſe of Correction.

And to authorize the Conſtable, Tything-man, and other Officers, to apprehend and order them as aforeſaid. See 39 *Eliz. Chap. 4.* and 17. 43 *Eliz. Chap. 2.* 21 *Jac. (1) Chap. 28.* 7 *Jac. (1) Chap. 4.* 5 *Eliz. Chap. 4.* *Dalt. Chap. 47.* Folio 123. 125. 134.

## C H A P. LVIII.

*The Constables Office in disposing of the Wives and Children of Rogues, Vagabonds, or Sturdy Beggars.*

**T**HE Wife of such Sturdy Rogue or Beggar, the Children being under Seven Years of Age, must be placed with the Husband; and if he be Dead, then the Children to be placed with the Wife in the Parish where she was Born or last dwelt, and the Vagrant Children exceeding Seven Years of Age, must be sent to the place of their Birth; and if with Children under Seven Years of Age, the Vagrant Parents are placed at the place of the Birth of the said Children, or in the place where they last dwelt; if afterwards the Parents or either of them happen to die or run away, leaving the said Children, yet they once Settled, must still remain in that Settlement, and ought not to be sent to the place of their Birth, tho' they have attained to the Age of 7 Years or upwards, according to the 29 Eliz. Chap. 4. Resol. Judges Sect. 45. Dalton Just. P. Chap. 47. Folio 135.

The Vagrant Wife must be sent to her Husband, tho' he be no other than a Servant in any Parish or Town, and a Rogue or Vagrant not able to assign any place of Birth, if he have a Wife and Children under seven Years old, they must be sent with the said Vagrant Rogue to the Parish or Town through which they by Sufferance last past unpunished, and the Children relieved with the Work of their Parents, though they be committed to the House of Correction, if it be possible they thereby can relieve them.

C H A P.

C H A P. LIX.

*The Duty and Office of a Constable, &c. relating to Ale-houses, Inns, &c.*

**H**E that without a License shall presume to keep an Alehouse, selling Ale or Beer, forfeits 20 s. to be levied by Distress and Sale of Goods, and converted to the use of the Poor of the Parish, and this to be done by the Constable and Church-wardens by Warrant from a Justice of the Peace of the same County, and upon Distress and Sale, the Overplus to be returned to the Owner of the Goods, if any such remain; and a Constable, &c. refusing or neglecting to execute any such Warrant to him directed, forfeits for such his Contempt 40 s. upon failure of Goods to levy the Distress upon such Ale-house-keeper; the Constable being impowered by the Warrant aforesaid, may openly whip or cause the Offender to be whipped in his presence; the Goods upon Distress are to be Sold in three Days; the Offence to be proved before the Justice of the Peace who grants the Warrant, and the Justice upon Default of the Constable in executing his Office relating to the Premises may commit him to Goal till he causes the Offender to be whipped, or pay the Forty Shillings to the use of the Poor, 3 Car. 2. Chap. 3. Dalt. Just. P. Chap. 7. Folio 31, 32.

If a Warrant be directed from a Justice of the Peace to a Constable and Church-wardens against an Inn-keeper, Alehouse-keeper, or Victualer, for suffering excessive Drinking, or Tippling in his House, as any Towns-man or others so Tippling, or being Drunk, and he neglects to do his

his Duty, he forfeits 10 s. to be levied by Distress and Sale of Goods, to the use of the Poor of the Parish: Any Person for excessive Tipling, is to pay 3 s. 4 d. or to sit in the Stocks 4 Hours; for being Drunk 5 s. or to sit in the Stocks 6 Hours if the Money be not paid, or there be no Goods belonging to the Offender whereon Distress is to be made, and the Inn-keeper, Alehouse-keeper or Victualler, for suffering such Offences in his House, upon due proof forfeits 10 s. and the Distress made must be sold in 6 Days, if the Money of the Distress be not in the mean while payed; and if such Alehouse-keeper, Victualler, &c. refuses to sell a full Ale Quart of the best Ale or Beer for one penny, or two Quarts of small Beer for a penny, or selling less than such Measure, the party so offending forfeits 20 s. for every Offence, to be levied as aforesaid: and if in these particulars no Distress be found, or if the Officer neglects within 20 Days to certify the Default to the Justices, the Officer forfeits 40 s. to be levied by Distress and Sale of Goods to the use of the Poor, by Warrant to be directed to any indifferent Person, under the Hands and Seals of one or two Justices of the Peace; and for Default of such Distress, the Justice may send the Offenders to Prison, there to remain till the Forfeitures are paid, pursuant to the Statute, 1 Jac. Chap. 9. 1 Car. 1. Chap. 4. and some other Statutes relating to these Forfeitures and Penalties in particulars and generals; but Offences of this Nature are to be enquired into within 6 Months after they are committed, and the Constable and other Parish Officers may be charged upon Oath to make a due presentment of them.

As for Ale-measure, here it is meant *Winchester* Measure, the Statute not being repealed, by reason



reason of Excise, and dearness of Hops and Malt, to what it was in former times; the Price of Drink is raised by the Brewers, that a *Winchester* Quart of strong Beer or Ale, stands the Victualler in more than a Penny, yet let them beware of raising it to an extorting Price, lest this Statute may be made use of to keep their Consciences within Bounds of Moderation.

If any Alehouse-Keeper refuses to lodge a way-faring Person or Traveller, he or she offering Money for the Victuals and Drink, &c. in present Pay, the Constable upon such Refusal, may cause such Alehouse-Keeper, or Inn-Keeper, to be Indicted at the Sessions or Assizes, where he may be Fined or Imprisoned, or the Party so refused may bring his Action on the Case; but then ready Money must have been offered before-hand, if required, *Coke 9. Rep. Folio 87. b. 10. Hen 7. 8. Dolton Just. P. Chap. 7. Folio 28.* They lie liable to Penalties also, for keeping any Gaming in their Houses or Backsides; and indeed the Laws are very strict in these Cases, to prevent Mischief and Inconveniency.

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**C H A P. LX.**

*The Office of a Constable, &c. relating to Weights and Measures in Cities, Towns Corporate, &c.*

**I**N the Market-Towns, Cities and Buroughs, there ought to be common Sealed Weights and Measures, at which the Inhabitants may be freely allowed to Weigh; and all Foreigners must pay for every Draught under 40 *l.* one Farthing, and for a Draught between 40 and 100, a Half-Penny, and for a Draught between 100 and 1000, a Penny,

a Penny, which Money is to go towards the maintaining the Weights, and the Person that attends the Service, or the Officer that attends the Service may have his Reward at the Discretion of the Inhabitants, 8 *Hen. 6. Chap. 5.*

And if in a City, such common Weights and Measures are wanting, it Forfeits to the Queen 10 *l.* every Borough 5 *l.* and every Town where publick Market is held 40 *s.* and the Chief Officers of such such places, are upon the Request of the Inhabitants, &c. to them made, to Seal and Mark such Weights and Measures for any of the Queens Subjects, taking for Sealing and Marking, as the Statute in that Case directs, and none ought to Weigh or Measure with any other than what are Sealed and Marked, 8 *Hen. 6. Chap. 5.*  
11 *Hen. 7. Chap. 4.*

And for the more regular and due observing of this, that no Frauds in this kind may be, the Mayors and Chief Officers in Cities, Boroughs, &c. once every Year at the least, are to view all Measures and Weights within their Jurisdiction, and to Burn or Break such as are not Sealed, or less than Measure or Weight, according to the Queens Standard; also to Amerce the Offenders, viz. For the first Offence, 6 *s.* 8 *d.* for the second Offence, 13 *s.* 4 *d.* and for the third Offence, 20 *s.* and over and above, the Offender may be Adjudged to be set in the Pillory, 11 *Hen. 7. Chap. 4.*

C H A P. LXI.

*The Office and Duty of a Constable, in setting and ordering the Watches, Forcible Entries, &c.*

FOR the better Security, and quiet Repose of the Inhabitants in every Town, Village, Parish, and Tything, a Watch every Night from *Ascension-day* till *Michaelmas*, ought to be kept from Sun-set, to Sun-rising; which the Constables and other Officers there appointed, must cause to be set by two, four, or more able Men, according to the largeness of the place, 13 *Edw. 1. Chap. 4. Poulton Tit. Watch, 1. Dalt. 60. Folio 140.*

The Watches thus Lawfully set by Authority, have power to Examine such Persons as pass by them in the Night, being Strangers or others, and finding a reasonable Ground for Cause of Suspicion, they may Secure them till the Morning; and such as refuse to Obey, they may levy Hue and Cry in pursuit of them: And where they resist, if the Watchmen Beat them, it is justifiable; and to Secure them, they may put them into the Stocks, or Cage till Morning; and then if they give a good Account of themselves, or that no further Suspicion appear, but that they may be Honest People, they may let them go; but if otherwise, then they are to deliver them to the Constable, who is to convey them before a Justice to be Examined, who may Commit them, Bind them over, or utterly discharge them according as he finds Cause.

The Watch in this Case, is to Apprehend such as Ride, or go Armed, Scouts, Eves-Droppers, Nocti-Vagrants, Night-Walkers, and all sorts of Rogues and Vagabonds, &c. 1 *Dalt. Chap. 60. Folio 140. 5 Hen. 7. 5. 5 Edw. 3. 14.*

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The Watch to set by Authority, must be Men Healthy, and of able Bodies, and do their Duty, sufficiently Armed; and no person, not being an Inhabitant within the Town or Parish where the Watch is kept, can be compelled to Watch.

The Inhabitants are to take their Watching in turns, as it comes to them by the Number of Houses, as the Custom of the place has been, and may not be compelled out of Order, by the Constable to do it.

If any Inhabitant be Lawfully Warned in his Turn by the Constable to Watch, and refuses it, he may present him at the next Sessions or Assize, or make his Complaint to a Justice of Peace, who has power to Bind him over to his Good Behaviour, and so continue him to the next Assize, or Sessions to answer the Contempt; and this is the surest way, though Dalton holds the Constable, *Ex Officio*, may set him in the Stocks for such Contempt.

If a Constable, or any private person, do make a refusal to attend on a Justice of the Peace, being so requested to do, in order to remove a Force, or convey any party to the Goal for such a Neglect of his Duty, he may be imprisoned, and over and above Fined to the Queen, 15 Rich. 2. Chap. 2. *Dalt. Just. P. Chap. 22. Folia 57.*

CHAP

C H A P. LXII.


*The Office of a Constable relating to Hedge-breakers,  
Destroyers of Under-woods, &c.*

THE Constables, Head-boroughs, Tything-men, &c. are Impowered to Apprehend, or Cause to be Apprehended, any such Persons they suspect to have carried away any Burthens, or Bundles of Poles, Under-wood, Young Trees, or the Bark of any Trees, Pales, Rails, Gates, Posts, Hedge-woods, Broom, Furzes, or any Bundles of Wood, &c. And by Warrant under the Hand and Seal of one Justice, may enter into the House, or any place belonging to the House of such Offender, or Person suspected, and where they shall find any such Wood, &c. to Apprehend the Parry suspected for cutting the said Wood, and those in whose Custody it is found, and to carry them before a Justice of the Peace, in order to be examined; and if no sufficient Account can be given how they Lawfully came by it, or shall not within a Time limited prove who he bought it of, then shall he stand Convicted of cutting and spoiling Wood within the Statute of 43 Eliz. and for the first Offence shall give such Satisfaction to the Owner as the Justice shall appoint, and over and above pay to the Poor where the Offence was committed, such Sum as the Justice shall Amerce him in, not exceeding Ten Shillings, and for Non-payment, the Justice has power to commit the Offender to the House of Correction for a limited Time, as he shall think fit, not exceeding one Month, or at his Discretion to be whipped by the Constable, or other Officer.

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For the second Offence, the Offender is to be sent for one Month to the House of Correction, and there to be held to hard Labour; and upon a third Offence, to be punished as an incorrigible Rogue, 15 Car. 2. Chap. 2.

If any Person procure for Money any Burthen of Sticks, Wood, or Under-wood, &c. of such Persons as may reasonably be suspected to have gotten them unlawfully, and a Complaint be made to a Justice of the Peace, and it appear upon Examination, that the Wood so bought, was unlawfully come by, the Justice may compel the Party who bought it, to pay treble the value to the proper Owner; and for want of such Payment upon Warrant granted, the Constable may levy it by Distress and Sale of Goods, rendring the Over-plus to the Owner, if any there be, and in defect of wherewith to make Distress, to commit the Party to the Goal at his proper Charge, to continue there for the space of a Month, not liable to Bail, 15 Car. 2. Chap. 2.

 Note, that by Virtue of this Statute, no Person is to be punished, that for the same Offence has been punished by a former Law, and every Offender to be brought within the Force of this Statute, must be prosecuted within 6 Months after the Offence is committed.

CHAP

**C H A P. LXIII.**

*What is required of a Constable in the Performance of his Office, in case of Landlords Distraining for Rent, &c.*

**A** Ccording to the Act made the 1<sup>st</sup> Day of June, in the second Year of *W. and M.* 1690. If a Distress be made on the Premisses, and the Tenant, or Owner of the Goods and Chattels so distrained, do not within five Days after the Distress made, and notice thereof given with the cause of such taking, left at the chief Mansion-house, or most noted place on the Premisses charged with the Rent, for which the Distress is made, Replevy, giving sufficient Sureties to the Sheriff according to Law; that then the five Days expired, the Person so distraining, has power with the Sheriff, under-Sheriff of the County, or with the Constable of the Hundred, Parish, or place in which such Distress shall be taken; who by this Statute are required to be aiding and assisting, to cause the Goods and Chattels so taken in Distress, to be Appraised by two Sworn Appraisers, whom the Sheriff, under-Sheriff, or Constable are by this Act impowered to Swear, or Appraise the same truly according to the best of their Understandings. And such Appraisement made, Seizors may lawfully sell and dispose of the Goods and Chattels for the best Price that may be gotten for the same, towards satisfaction of the said Rent, for which the Distress is made, and of the Charges of such Distress, Appraisement and Sale, leaving the Over-plus, if any be, in the Hands of the Sheriff, or under-Sheriff, or Constable, for the Use of the Owner. And the Goods being left on the Premisses till Sale can



be made as aforesaid, upon any Pound, Breach of Corn, &c. or Rescues of Goods and Chattels distrained for Rent, the person or persons thereby aggrieved, shall upon a special Action of the Case for a Wrong thereby sustained, recover his or their treble Damages and Costs of Suit against the Offender, or Offenders, of such Pound, Breach, or Rescues, any, or either of them, or against the Owner of the Goods, in case any, after the Distress, have been found to come to his use or possession by such means.

But note, that in case any such Distress, or Sale as aforesaid, shall be made by Virtue or Colour of this Act for Rent, pretended to be Arrear, and Due, when in truth there is no Rent in Arrear, or due to the person or persons distraining, or to him, or them in whose Name or Names, or Right, such Distress shall be taken as aforesaid, his Executors and Administrators, shall and may by Action of Trespass upon the Case to be brought against the person or persons so distraining, or either of them, his, or their Executors, or Administrators recover double the value of the Goods and Chattels so distrained and sold; as likewise full Costs of Suit.

Note, that Hay, Corn, or any Grain are not to be hastily, or wastfully removed from the Premises before due Appraisement and Sale, to the Damage of the Owner, in scattering or wasting it, &c.

**C H A P. LXIV.**

*What relates to the Office of a Constable, in providing Carriages for the Queen, &c.*

**A** According to the Statute of 1 Jacobi 2. in this Case, the Clerk or Chief Officer of Her Majesties Carriages, shall three Days before Her Majesties Arrival, give Notice to the Neighbouring Justices, two, or more of them, by Warrant from the Green-Cloth, to provide such a Number of able Carriages, as shall be requisite for the Service, to be drawn by four able Horses, or six Oxen, or four Oxen and two Horses, to meet and be ready at the time appointed, to Load without delay; and for so Loading, they are to receive in Hand, after the Rate of Six-Pence a Mile, and not to be compelled to go above a Days Journey from their Habitations; and the Carriages Summoned to give their Attendance on Default, being Convicted of Neglect or Refusal, by the Oath of the Constable or other Officer, or two other Credible Witnesses, before the said Justice of Peace of the County, or Mayor, or other chief Officer of the City or Corporation, where he or they so neglecting Inhabit, and who have a Power to tender the said Oath; the Party so neglecting or refusing, shall forfeit the Summ of Forty Shilling to the Queens Use, forthwith to be Levied by Distress and Sale of Goods, the Over-plus if any be, to be returned to the Owner; and this to be done by Warrant from the said Justice of Peace, Mayor, or other Officer, and in case any Justice, Constable, or any other Officer, shall take any Gift or Reward to Excuse any Person from this Service, or shall Injuriously charge or grieve any

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Person through Hatred, Envy, or Evil Will, who ought not to make such Carriage, or Impress more Carriages than shall be directed by Warrant of the Green Cloth ; upon Proof and Conviction thereof, the Party so offending, shall Forfeit the Sum of Ten Pounds to the Party grieved, or to any other who shall Sue for the same, to be recovered by Action of Debt, in any of the Queens Courts of Record, wherein no Essoign, Protection, or Wager of Law shall be allowed ; and if any Person or Persons, shall impress any Horses, Oxen, Cart, Wain, or Carriages for the Queens Service, other than such as are Lawfully empowered, he or they so Offending, upon due Proof and Conviction, shall incur and suffer the Punishments contained in the *Act of 12 Car. 2.*

All High Constables, Mayors, Bayliffs, and other Officers who warn the said Carriages, or whose Duty it is so to do, must make a Return in Writing, to the Clerk or other Officer of the Carriages, of the Names and Places of Abode of every such Person who is so Warned to bring in his Cart or Carriage, so that the Defaulters may be known ; and the said Officers appointed by the Act to warn them, may be Discharged and Indemnified, and the Defaulters punished as aforesaid.

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## C H A P. LXV.

*The Office and Duty of a Constable, relating to the Queens Game, Fishery, Excise, and Customs.*

**U**Pon a Warrant directed to a Constable, Headborough, &c. under the Hands and Seals of two or more Justices of the Peace, the Constable &c. may search Suspected Houses for Setting-Dogs,

## A Guide to Constables, &c. 153

Dogs, Nets, and other Tackle for taking Pheasants, Partridges, and other of the Queens Game, and destroy them so found; but in Case they have free Warren, or are Lords of the Manor, or are Freeholders of Forty Pounds *per Annum*, or more of Estate or Inheritance, or Eighty Pounds *per Annum* for Term of Life, or be worth in Goods 400 *l.* they are exempted from this Seizure.

As to the Constables Office relating to Fishery, he may by Warrant under the Hand and Seal of a Justice of Peace, apprehend such as destroy the Spawn or Fry of Fish along the Sea-shore, or in any Creek or Haven, or within five Miles of the Mouth of either of them, or such as Fish with unlawful Nets to destroy the young Fry, the Meshes of their Nets not being 3 Inches and a half between Knot and Knot, for which Default they are to pay to Shillings, to be levied by Distress and Sale of Goods, the Overplus to be returned to the Owner, if any remain, 3 *Fac. 1. Chap. 12. Wingate's Abridg. Title Fish, Fishers, Fishing.*

And for the Encouragement of the *English* Fishery, if any Herrings, Ling, Cod or Pilchards, Fresh or Salt, Dry or Bloated, or any Eels or Congers, or Salmon, be brought in and uttered to Sale by Forreigners, it may be lawful for the Constable, Head-borough, &c. or any other Person to seize them, the one half to the Poor of the Parish, and the other half to the use of him that seizes; and if any one shall refuse to assist a Constable or other Officer hereto impowered on this occasion; being commanded so to assist him in the Queens Name, he upon complaint and proof of such Contempt, lies liable to be Prisoned and Fined at the Discretion of the Justice before whom he shall be convicted, 18 *Car. 2. Chap. 2.*

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As to the Duty of a Constable relating to the Excise, note, that he is to be aiding and assisting when required, to the Gaugers, and Under Officers employed therein, and to go with them in the Night time to such Houses where any Liquors are to be Gauged. They are moreover to levy Forfeitures where a Conviction is made before the Justices or Commissioners, of any Concealment, Fraud, or the like thereupon, by Warrant for that purpose, directed to make Distress and Sale of the Offenders Goods, and to render the Over-plus if any be, to the Owner, and for want of such Distress, to carry the Party so offending upon Commitment to Goal, there to remain till there be Satisfaction made, and upon Warrant directed to a Constable from the Commissioners, he is to Summon all Ale-house-keepers within his Division, at such days and places as shall be appointed in the said Warrant from time to time, &c.

As to what concerns the Constables Office relating to Customs, by the Act made the 14 Car. 2, such as have Authority by Writ of Assistance under the Seal of the Court of Exchequer, may take to their Assistance the Constable, Head-borough, or other Peace Officer, inhabiting near the place, and in the Day time enter the House, Shop, Cellar, Ware-house, Rooms, or other place, and in case of Refusal or Resistance, break open Doors, Packs, Chests, Trunks or such places, and take away such Uncustomed and Prohibited Goods as they shall there find, and convey them to the Queens Store-house, in such Port as is next to the place where the Merchandize shall be Seized, see further, 13 Car. 2. Chap. 11. And if the Officers of the Customs, or any acting, being assisting or aiding to them, shall be Sued, Indicted, Prosecuted or Molested,

molested, such Person or Persons, his or their Heirs, Executors and Administrators may plead the general Issue, and give any of the Acts relating to the Customs, in Evidence in any of the Queens Courts of Justice, 14 Car. 2. Chap. 11.

C H A P. LXVI.

*The Office of a Constable, relating to Clothiers and Irish Cattel, &c.*

IT is the Head-Borough, or Constables Duty upon Request, to be Aiding and Assisting to the Wardens and Assistants, for regulating the Worsted Trades, and other Stuffs made at *Norwich*, in the County of *Norfolk*, and usually called *Norwich Stuffs*, 14 Car. 2. Chap. 5.

And the Constables in the *West Riding* of *Yorkshire*, by Warrant directed from the Justices of the Peace, the Masters and Wardens of the Corporation or any 13 of them, are Impowered to Levy such Fines, Penalties and Forfeitures, as by Virtue of the Statute mentioned, shall become due from any Clothier; and this to be done by Distress and Sale of the Offenders Goods, &c. the Overplus to be restored to the Owner (if any remain) upon Demand, 14 Car. 2. Chap. 5.

The Justices of Peace and High Constable, have power to Search any House, Ware-house, or other place, for Tenters, Ring-ropes, Head-wrenchies, or such other things used in the Stretching Cloth; and such as they find, they may deface; and the second time they are used, they may take them away and Sell them; the Money to the use of the Poor to be distributed as they shall see fit, 33 Eliz. Chap. 20.

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All the Clothiers must pay their Spinsters, and other Work-folks in ready Money, and not in Wares, and their Wooll to be delivered to them in due Weight, under the Penalty of 5 *d.* Forfeiture for every Default; and those Work-folks are to do their Work faithfully, under penalty of forfeiting double Damages to the Party grieved, 4 *Edw. 3. Chap. 1. Fitz. Just. P. 103.* And the Masters or Head-Officers in a Corporation, where no Master is, and out of a Corporation, the Justice of Peace, High-Constable, and Stewards of Leets, shall hear and determine such Matters as arise upon Complaint, as Non-payment of Wages or Damages, as before mentioned; and upon due Examination, if they find Cause, they may commit the Persons offending to Goal, till such time Satisfaction be made to the Party aggrieved, *Stat. ibid.*

*Irish* Cattel are not to be brought into *England*, under the penalty of their being Seized by the Constable, Head-Officer, or any other Person or Persons; and to prevent fraudulent Seizures and Compositions, the Party or Parties so Seizing, shall within six Days after, cause the said Cattel, Sheep or Swine, to be Killed, and the Hides and Tallow to be to the Seizor, and the rest distributed by the Church-Wardens and Overseers, among the Poor of the Parish, where any large Cattel, Sheep or Swine shall be imported or found; and such Seizure the Overseer of the Poor, or Church-Warden so neglecting or failing in his Duty, shall for every one of the large Cattel, Forfeit 40 *s.* and 10 *s.* for any of the smaller Cattel, as Sheep, Swine, &c. which should have been Killed and Distributed, as aforesaid: To be Levied by Distress, and Sale of Goods, one half to the Poor of the said Parish, and the other to him that does inform; and this to be done by Warrant, and under Hand and Seal



## A Guide to Constables, &c. 157

Seal of any one Justice of the Peace; and for want of such Distress, the Offender to be imprisoned without Bail, for the space of 3 Months.

Mutton or Lamb imported, is subject to the like Seizure and Penalties; as Beef, Pork and Bacon, as also Butter and Cheese imported from *Ireland*, and *English* Cattel purposely intermixed with *Irish*, to colour a Defraud, shall be reputed *Irish*, and liable as the same in all respects, 32 *Car. 2. Chap. 2.* And indeed all Cattel imported into *England* from any Country beyond the Seas, or into the Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, are Seizable, unless from *Man Island*, and they to be Landed in the Port of *Chester*, or Members thereof, and they not to exceed 600 in one Year, and to be of no other Breed but that Island.

*Note*, The Cattel Seized as aforesaid, are to be kept in some publick place by the space of 48 Hours, and if in that space the Owner, or Owners, or any for him or them, shall before a Justice of the Peace of the same County, where the Seizure is made, make out by the Oath of two Credible Witnesses, that the said Cattel were brought from no part beyond the Seas, the Isle of *Man* excepted; then upon Warrant from the Justice, they are to be re-delivered to the Owner, as the 18 of *Car. 2.* directs, revived with some others on this Subject, and made perpetual by the 32 of *Caroli 2.*

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### C H A P. LXVII.

*Rates for the Relief of Poor Maimed Soldiers, Mariners, Prisoners, &c. How to be Gathered and Ordered, &c.*

Where Money is Rated for Relief of the poor Maimed Soldiers, Mariners, Prisoners, &c. The Constable within his Constabulary, upon refusal

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refusal or neglect of Payment may, as also the Church-Wardens, levy it by Distress and Sale of Goods, rendering the Over-plus to the Owner, if any there be, 43 *Eliz. c. 3. Wingates Stat. Tit. Captain and Soldiers, &c.*

All Money in this manner, and to the use aforesaid Collected, must be Quarterly delivered to the High Constable 10 Days before the Quarter-Sessions, or in Default, the Constables, Church-Wardens, their Executors or Administrators, are to pay 20 s. by way of Forfeiture; and the High Constable so receiving, is to pay it to the Treasurers appointed by the Justices to receive it, or upon Default he forfeits 40 s. the Forfeitures to be levied, and employed by the Treasurer for increasing the Stock for the aforesaid Uses, 43 *Eliz. Chap. 3. &c.*

The High Constables are under the Penalty of Five Pounds, to pay such Money Quarterly at every Sessions, to such Treasurers or Collectors, as is raised in their respective Parishes, and payed to them by the Constables and Church-Wardens for the Relief of poor Prisoners, 14 *Eliz. Chap. 5. &c.* And they may make Distress, as in case of Maimed Soldiers aforesaid, upon refusal or neglect of payment, for Money so Rated for the Relief of poor Prisoners in the *Marshalsea* or *Queens-Bench*; as likewise for the Relief of the Poor in Alms-Houses and Hospitals; and for want of Distress, the Party may by the Justices of the County, be Committed to Prison, there without Bail or Mainprize to abide till the Sum be paid. And the Constable or Church-Warden neglecting to pay it in Ten Days before the Quarter-Sessions as aforesaid, forfeits 10 s. each, and the High Constable 20 s. if he pay it not in at the Quarter-Sessions, as directed; which Forfeitures the Treasurer may levy by Distress and Sale of Goods, and employ to the increase of the Stock, 43 *Eliz. Chap. 2. &c.*

C H A P. LXVIII.

*What particular Things and Matters High Constables ought to return before the Justices in Sessions, and to be returned to them by the Petty Constables in their respective Jurisdictions.*

1. **T**hey are required to return the Christian and Sir Names, Additional Names, and Qualities of all Popish Recusants, as well Lodgers as Householders, Residing or Dwelling in any of their respective Parishes or Divisions.

2. The Names of such as shall Prophanely Curse and Swear, with the Number of their Oaths, immediately, or within ten days, informing the Justice of Peace of such Offence.

3. The Names of such Persons as shall Drink, or Tipple in any Inns, Ale-houses, or Taverns at any time, especially on the Lords-day; and such Persons as they shall find Drunk, with the Names of those that entertain them.

4. Such Persons Names as suffer any unlawful Games to be used in their Houses, Gardens or Backside, with the Names of such as haunt Gaming.

5. They are to return all such Ale-house-keepers or Victuallers, as sell Ale or Beer without License.

6. Such Persons as are to Watch and Ward, who neglect or refuse to do their Duty therein.

7. The Names of such Persons as divide their Houses into Tenements, and take in Lodgers or Inmates that Annoy their Neighbours, or are likely to be a Charge to the Parish.

8. The high Constable is to return the Defaults of Petty Constables, Tything-men, &c. for neglecting to apprehend and punish Beggars, Rogues, Vagabonds, or refusing to Pass them, &c.

9. They

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9. They are to certifie the Names of such persons as refuse to take Apprentice poor Parish Children according to the Statute.

10. All Masterless Men and Women living at their own Hands, such as are Idle, refusing to Labour, and can give no Satisfactory Account how they get their Living, and all suspicious Persons, as Mothers of Bastards, Whores, Nocti-vagrants, Night walkers, or such as are likely to be chargeable to the Parish wherein they Reside.

11. The Names of such as neglect, or wilfully omit, to make due Rates and Collections for the Relief of the poor of the Parish, or that cannot, or do not give a just Account how the Rent and Stock of the poor is employed.

12. They ought to return all defects in the High-ways and Bridges; also Pavements in their Districts where there are no Commissioners, or Defaults are neglected by them, with the Names of such as ought to repair them, and have neglected or refused so to do.

13. They ought to present all such Scavengers as are found negligent in cleansing the Streets, or in other parts of their Duty; and all common Annoyances in the Streets, Lanes or Alleys.

14. The Name or Names of every such Person or Persons who keep Swine, to the common Annoyance of their Neighbour, or any other in and about the Liberty and Precincts, where Hogs ought not to be kept; more particularly referring to the Cities of *London, Westminster*, and their Liberties.

15. They ought to present Bakers, putting Bread not due Weight to Sale, with a particular Account thereof. Also Brewers selling Beer or Ale to Unlicensed Ale-houses, or Victualling-houses; likewise all Regrators, Forestallers of Markets, Ingrossers of any Corn or Grain, Butter or Cheese, Bacon, or any kind of Dead Flesh, or Provisions whatsoever.

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And in order to make out these Matters against the Delinquents, they are to return the Names of such Persons as can testify or prove the Offences before the Justices in their Sessions and Meetings ; and thereupon they are to be Summoned, in order to be Examined, that it may be known how far they can inform them in the Particulars alledged ; and such as pave not before their own Doors, or such places as ought to be paved, are liable to be returned by the Petty Constable to the High Constables in their several Precincts, or Districts, and by them presented before the Justices in their Sessions, &c.

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**C H A P. LXIX.**

*The Office of a Constable, &c. relating to Stone-Horses, &c.*

**I**N this Case there are several Laws provided to prevent Damage, which Owners may sustain by the hurt or unseasonable covering of their Mares, in which Case it is provided by the Statute, 32 Hen. 8. Chap. 13. That none shall put to Feed upon any Forest or Common, except a Common or Forest where Mares are not usually put or kept, any Stoned Horse exceeding two Years old, and not fifteen hands high from the lower part of the Hoof, to the upper part of the Withers ; and if any Stoned Horse of a lower Stature be put to Feed in any such Common or Forest, unless it be in the Fenny Grounds of the Isle of Ely, and in other parts of Cambridgeshire ; also Northamptonshire, Huntingdonshire, Lincoln, Nottingham, Suffolk and Norfolk, where they are required to be but thirteen Hands high, any Person may seize them to his own use by the Assistance of the Constable,

stable, Keeper of the Ground, Head-Borough, Bailiff, or other such Officer, conveying the Horse to the next Pound, there to be measured by the Officer in the presence of three sufficient Witnesses, and being found lower than the Statute directs, there to be disposed on; 8 *Eliz. Chap. 8. Wingates Abridgment of the Statutes, Title Horses*; and so according to the Statute of *Hen. 8.* before mentioned; and such as are required so to do, refusing to Measure, or be present at Measuring, forfeits 40 s. each for every Refusal or Default, one half to the Queen, and the other half to the Prosecutor; but however, the Horse must be wilfully put in the Common or Forrest by the Owner or his Order, for if he escape thither, he shall not be questioned in this kind, unless he remain there above 4 Days after Notice given to the Owner at his House, or in his Parish Church, 32 *Hen. 8. Chap.*

*Note*, That all Forrests and Commons require to be driven every Year at *Michaelmas*, or within 15 Days after, by the Keepers of the Ground, Constables or other Officers thereto appropriated, under the Penalty of 40 s. upon failing so to do. And they have Power likewise to drive them at any other time of the Year as they shall see it convenient in their Discretion; the like privilege has the Owner of the Ground. But by the 21 *Jacob. (1) Chap. 28.* this Statute of the 32 *Hen. 8.* is not to extend to the County of *Cornwall*, that being a Royal Duchy.

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### C H A P. LXX.

*The Constables Office and Duty, relating to such Persons as Prophanely Swear and Curse.*

**B**Y a late Statute made in the 6 and 7 Year of the Reign of *William the Third*, *Chap. 11.* it

it is Enacted for the restraining that dangerous, and unprofitable Sin of Swearing and Cursing, that such as in the presence or hearing of a Justice of the Peace of the same County wherein the Offence is committed, or Head Officer, or Justice of Peace of the City, do Swear and Curse, or are thereof convicted, by Witness or Confession of the Party before any Magistrate, the Offender if a common Soldier, Labourer, or Servant, shall pay for every Oath, &c. 18*d.* for use of the Poor of the Parish wherein the Offence is committed, and every other Person is to pay 2*s.* for the like Offence; for the second double, for the third treble, to be levied by Distress, by Warrant from one Justice of the Peace; and where no Distress is found, the Offender if above Sixteen Years of Age is to be set in the Stocks by the space of one Hour for one Offence, and two Hours for more than two Offences, but if under Age, to be whipt by the Parents or Master in the presence of the Constable. All Justices of Peace, Constables, &c. who neglect to put this Act in Execution, knowing of the Offence, to forfeit 5 Pounds, and none are to be prosecuted upon this Act beyond the Expiration of Ten Days; therefore Information must be given within the said Ten Days after the Offence committed. And for the better deterring Offenders to commit Offences of this kind, it is ordained to mind them of the Danger and Shame they are like to incur thereby, that this Act be publicly Read in Churches next Sunday after every Quarter-Day, immediately after Morning Prayer, under Penalty of 20*s.* for each Omission; and Justices, &c. are to keep a Register of all such Convictions before them, and to certify the same at the Quarter Sessions, to be there Recorded, where any one may search for the same, and see it without paying any manner of Fees.



## C H A P. LXXI.

*The Constables Office and Duty further relating to Vagabonds and Beggars, and Collecting Monies for Building and Repairing Goals.*

**B**Y an Act of the 11 and 12 of *W. 3.* it is enacted, that after the 24 of *June 1700.* That if any Vagabond, Beggar, or any Person whatsoever, shall be brought to any Constable, Headborough or Tything-man, or other Officer, with a Pass, Testimonial, Letter of Request, or other Writing whatever, pretending thereby either to be Relieved or Conveyed: the said Person or Persons shall by such Constable or other Officer, or by some other sufficient Person or Persons whom he shall order or depute, be carried before some one Justice of the Peace of the County, which Justice is carefully and diligently to examine him or them, and if he finds they ought by Law to be punished, he is to send them to the House of Correction, and take such further Course as in that case the Law directs: But if no such Cause appear, then he or they are to be immediately conveyed out of the County, to such Town of the next County, unto or through which such Person or Persons are to pass or be conveyed, as the said Justice shall think most proper; and every Constable or other Officer, is to convey them to the House of Correction, or to such Town as aforesaid, without delay, and further, the Justice is by this Act obliged to give the Constable or other Officer a Certificate without Fee, of the Number of such Persons as he shall so order to be punished or conveyed, as also the manner how, when, and from whence such Persons are to be conveyed: And further, the Justice ought to Tax the Charge on the

the back of the Certificate, which the Constable, &c. delivering to the High Constable of that Division, he is to pay him his Charges out of the Money of the Goal and *Marshalsea* Money, and take a receipt for the same, which receipt shall be accepted by the Chief Treasurer of the County, and allowed in his Accompts as so much Money, and if the Goal and *Marshalsea* Money fail to be sufficient, then the Justices in their Quarter Sessions may raise a Tax in their Counties, Ridings, and Divisions, in such manner as they raise it for the County Goals and Bridges, the Money to be paid to the chief Constable of each Division, so as they shall have a quarterly Payment in their Hands before-hand, and as often as the said Petty Constables or Deputies shall produce the said Certificates, they shall be paid their Charges according thereto, and the High Constable must account for so much at the next Quarter-Sessions, and the Petty Constable is not to charge the Inhabitants of his Constabulary with any Sum or Sums of Money, or any Provisions, to the Relief or Conveyance of such Rogues or Vagabonds.

And if any Constable or other Officer to whom it belongs, shall neglect to apprehend such Vagabonds or Beggars, or be remiss and negligent in doing his Duty by this Act required, then for such Offence he shall pay 20 s. one fourth part to go to the Informer, and the other 3 parts to the poor of the Parish, and he may be convicted before a Justice by the Oath of one Witness, and upon refusal to pay, Distress may be made by Warrant as in other Cases: But this Act is to continue but 3 Years, and from thence to the end of the next Session of Parliament.

By another Act of Parliament 11 and 12 W. 3. intituled, *An Act to enable Justices of the Peace to Build and Repair Goals in their respective Counties.*  
The

The Justices of the Peace at their General Quarter Sessions are to direct their Warrants or Precepts to the High Constable, Petty Constable, Bailiffs, or other Officer or Officers as they shall think fit for the collecting and levying the Money in order thereto ; and upon denial of any Assessed after 4 Days demand to pay the same, they are impowered to make Distress and Sale of Goods, and after 4 Days keeping, if the Money be not paid, to sell the same, and deducting Charges, immediately to render the Overplus to the Owner, the Distress being first Appraised by two or more of the Inhabitants, and the Constable, &c. to pay the Money so Collected to the Treasurer, or Treasurers appointed by the Justices to receive it ; and for refusing to account after four Days demand, the Justices of the Peace, or the greater number of them, are impowered to commit him or them to neglecting or refusing, to Prison, there to remain without Bail or Mainprize, till he or they shall have made a true Account.

## C H A P. LXXII.

*The Constables Office relating to such as make or put bad Malt to Sale, &c.*

**T**HE Constables Office relating to Malt, is to see such Malt as comes to be sold within his Division, or there made for Sale, that it be well conditioned, and no evil Malt mixed with the good : And if upon view it prove bad, the Constable and Bailiff of the Liberty, with the Allowance of one Justice of the Peace may sell it for such price as can be got, or at such rate as the Justice shall set upon it, 2 *Edw. 6. Chap. 10.* 21 *Jas. (1) Chap. 28.* 3 *Car. (1.) Chap. 4.*

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*The Duty and Office of a Church-Warden, Quest-Man, Side-Man, &c. in all Respects relating to what concerns them in the due and safe Discharge of their respective Trusts.*

**C H A P. LXXIII.**

*Of the Office of a Church-Warden, &c. its Antiquity and Dignity. How to be Chosen. What they are to do in keeping the Lords-Day, and what relates to them as to Goods of the Church, and well ordering Matters, &c.*

**T**HE Office of a Church-Warden appears in effect to be much Antienter than in Name, tho' the latter is of a considerable Antiquity, the Office itself being as Antient as the Tollerating Christian Churches in the due Exercise of Religion, by the Civil Power, but often interrupted and laid aside by the Persecutions and Turns of Government; however the Office is exceeding necessary and beneficial to the Churches, and Inhabitants of the respective Parishes; for they are in the manner of a Corporation as they are taken at common Law, properly termed Church-Wardens at the common Law, because by that Name they are enabled to take the Chattels and moveable Goods, and to Implead or be Impleaded, Sue or be Sued, relating to such Goods and Chattels as belong, or are to the use and behalf of the Parish, of which they are such Officers; and the preservation of the Goods of the Church, are more immediately and particularly under their Care, as the Communion Plate, Books, and other Ornaments and Furniture, their Care being not to suffer any thing to be wasted or diminished, they find at the time of their entering on their said Offices, at which time they ought to be put in their Custody and Charge, to take notice of.

**As**

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As for the Choice, or Electing these Officers, it is to be Annually in *Easter*, unless the Custom in a Parish alter the time; and in the Book of the *Constitution of Canons Ecclesiastical*, in the first Year of the Reign of King *James* the first, The Church - Wardens, Quest-Men, Sides-Men, or Assistant, in the respective Parishes, are to be Chosen or Elected by joynt Consent of the Ministers and Parishioners, if so it may be; but upon disagreement, the Minister to choose one, and the Parishioners the other; and without such a joynt, or several Election, no person ought to take upon him the Office of a Church-Warden, nor when chose, to continue any longer than the space of one whole Year in the said Office, unless in the same manner again chosen. However, there are several Cases that have set aside this Canon, where the Custom in any Parish has been contrary to it; for in such Cases, the Custom has been allowed and observed before the Canon: And the Church-Wardens, &c. being Chosen, are to be diligent in observing that the Parishioners make due resort to the Parish-Church on the *Lords Day*, and upon Holy Days, and there to continue Devoutly and Reverently during the time of Divine Service; and such as neglect without Lawful Excuse, or urgent occasion for Absence, after Admonition, if they further Neglect, their Names must be presented by the Church-Wardens to the Ordinary of the place, See Canon 89, 90. 5 *Edw* 6. Chap. 1.

They are strictly to see the *Lords Day* kept in and out of the Church, and visit Inns, Taverns and Ale-Houses; and if in the time of Divine Service they find any Persons Tipling there, they may carry them before a Justice of Peace, who may cause them to pay 3 s. 4 d. for Tipling, over and above the 12 d. due for being absent from the

Church

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Church; and he that keeps the House, for so suffering them to Tipple, forfeits 10 s. and these Sums to go to the use of the poor of the Parish,  
4 Fac. Chap. 5.

The Minister and Church-wardens are not to suffer any Person to preach within the Church nor Chappel, not producing a License to authorize him so legally to preach, and such a one as shall to them appear sufficient, *Can.* 50. 85. No Sports are to be suffered in the Church, Chapel, Church or Chapel-yard, on a Sunday or other Days, or any thing unseasonable, or tending to the profaning those places, nor the Bells to be rung for sport or pastime, but to be rung only upon suitable and solemn Occasions.

The Church-wardens, as I hinted, being in the Nature of a Corporation, have power to take Gifts for the purchasing Furniture to the Church, or for other advantages to the Behoof of the Parish; but they may not take an Estate of Land by the name of Church-wardens only; for if there be a Feoffment made to the Church-wardens of the Parish, the Use is void in it self; for they are not in a Capacity to take such a purchase, nor may they subscribe to have Lands to themselves or their Successors; for as to Lands they are no Corporation, but to Goods only.

If a Bell be broke, or any ways spoiled, so that it is not Tunable, the Church-wardens by the Agreement of the Parishioners, or the greater part of them, may cause it to be new cast, leaving it in the Founder's Hands till he is paid, and by that means the Church-wardens may bar their Successors of that Account.

If any indifferent Person, or other in place, buy a Bell, set up a Pew, or any Ornament to the Church, it cannot be taken away by him or his Heirs, &c. Because it is a Dedication, and the  
H Church-

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Church-wardens may sue those that attempt it but the Action must be commenced for Goods for the use of the Parish, and not in the Church-wardens own name; nor can any Church-warden sell, impair, or release any of the Goods of the Church, without the free consent of the Sides-men or Vestry, under pain of being brought to Account for it, by the succeeding Church-wardens, and forced to make sufficient Satisfaction.

If the Church-Windows or Walls be broke, the Trees cut down in the Church-yard, or the Grass eaten up there, this lies in the Parsons Care for redress, and not the Church-wardens, for the Parson is Conservator of the Body of the Church and Church-yard, as the Church-wardens are of the Moveable Goods only.

### C H A P. LXXIV.

*What relates to the Office of a Church-warden in pairing the Pews, about seating Persons in the Church, and keeping good Order: What rates to make for the Repair of the Church, and what not, with other things of the like Nature.*

**T**HE Church-wardens have the Care of repairing the Pews in the Body of the Church, and other Seats; but it is held in most cases they have not the disposing of them in the Body of the Church, the disposal belonging to the Ordinary of the place, to place and displace whom he pleases, tho' in this there are excepted or exempted Cases; for suppose a Man and his Ancestors, or all those whose Estates he hath in his possession, certain Messuages, have time out of Mind continued to repair an Isle or Pew, or sit there, and alters the Case, and the Ordinary cannot meddle nor displace; for if he do, a prohibition lies out.



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for by prescription, he hath, and enjoins it for a reasonable Consideration : But if there be no care taken to repair such a Pew by the Party claiming by prescription, and it run to ruin, the Ordinary may take it into his Hands ; yet he hath nothing to do in this Case in exempted Chappels belonging to Noble-men.

The Church-wardens beside the looking after the Books and other Necessaries and Ornaments of the Church, to see them kept in good Order, are to provide Bread and Wine for the Sacrament, proportionable to the number of the Communicants, and a Parish Rate may be made for supplying this and other Necessaries. The Church-wardens and Quest-men are likewise to see, that in every meeting in the Congregation, the Peace, and a due *Decorum* be kept. Also to put out of the Church such as are Excommunicated.

In Case of making a Rate for the defraying of Charges, it must be done by the Church-wardens, with the Consent and Assent of the major part of the Parishioners, House-keepers, of which they are to have convenient Notice, before such time appointed for the said Meeting, to fix and settle such Rates : Now if upon the setting upon these Rates, a Man dwell in one Parish, and have Land in another which he occupies there, he lies chargeable for his Lands so occupied in the Parish where his Land lies, but if he Lease out the Land he hath in another Parish, reserving Rent, then is he not to be Charged for his Lands there, because there he is not a Parishioner and Inhabitant liable to be charged elsewhere, *Co. 5. Report, Folio 57.*

No Person keeping a Stall in a Market, and not being an Inhabitant of the Parish where that Market is kept, can be rated toward the Reparation of the Church ; but if a Citizen build a House in an out-Parish, and partly live there, and partly

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in the City, and having any Land to lease out or occupy in the Parish where his Country House stands, he is however as an Inhabitant, liable to the Church Rate, and no prohibition lies in this Case in the Court Christian, because the Jurisdiction of the thing is not in their power, tho' he be rated more than they that have 50 or 100 Acres of Land in that Parish.

If there be in a Parish a Chappel of Ease, and one part of the Parish time out of Mind is wont to repair it, hear Service, and have a Custom to Marry in it, and all other Rites, except Burying their Dead at the Parish Church, they are however liable to be rated for repairing the Mother Church, *Mich. 13 Jac. (1) C. B.*

Where only part of the Parishioners are rated and for defect of payment sued in the Ecclesiastical Court, the matter must be pleaded in that Court, for in this Case a prohibition will not lie, and if the Majority of the Parishioners agree to increase the number of Bells or Ornaments of the Church, it is binding to the rest, and they are liable to the Rates that shall be made, tho' not consenting to it; and for any Ornaments for the Church, they ought to be rated only for their personal Estates, and not for Land, &c.

And among other things it is Enacted relating to the City of London, that where any Church-yard or Church be fronting or adjoining to any of the Streets, Lanes, or passages mentioned in the said Act, the Persons thereby appointed and authorized, may for the paving the Streets, &c. so far as the Church or Church-yard extends, assess the Inhabitants of the Parish a reasonable Rate, to be paid by the Church-wardens of every such Parish for the time being, who in the behalf of the Parish, are required by that Act to pay the same Rate, 22 and 23 Car. 2. Chap. 17.

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## C H A P. LXXV.

*Their Choice of Surveyors, giving up their Accompts, making Distress. Of Forfeitures, Presentments; and where, and where not they may give them in; with other things.*

THE Business of the Church-wardens is to be conjunct with the Constables, in choosing the Surveyors for the high-ways, and appointing proper Days for their Work; also in the Oversight of the high Constable, to account for Monies levied by way of Forfeitures, relating to the High-ways; and with the Assistance of two Justices of the Peace, one to be of the *Quorum*, oblige the High Constable to account for, and pay the Money so coming to his Hands; and to execute the Justices Warrant for Forfeitures and Penalties, for not-cleansing the Streets, or repairing the High-ways, 14 Car. 2. Chap. 2.

The Church-wardens taking to them the Assistance of the Overseers of the Poor, have power to execute the Warrants directed in the Woollen Buying Act, and levy the five Pounds penalty by Distress and Sale of Goods, for Non-payment, to be employed to the poor of the Parish where such Offence is committed, 18 Car. 2. Chap. 4.

In London, Westminster, the Borough of Southwark, &c. The Church-wardens, together with the Constables, Overseers of the Poor, and Surveyors of the High-ways in every Parish respectively, or a greater number of them, are on Monday, or Tuesday in Easter Week yearly, upon giving publick Notice, to call together such other Inhabitants as have born the like Offices, to nominate and make choice of two fit Persons, being Trades-men of their Parish, to be Scavengers for the Lanes, and

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Streets, other open passages of each Ward, or Division within the said Parish; to continue for the space of a Year, or till others are chosen and settled in their place, 2 *W. & M.*

At the end of the Year, or within one Month after at furthest, the Church-wardens are to give up the Account of their Receipts and Disbursements before the Minister and Parishioners, and upon quitting their Offices, to deliver up to the Parishioners such Money and Things as are remaining in their Hands, that it may by them be delivered over to the succeeding Church-wardens by Bill indented, *Cannon 89.*

Upon refusal of this, they may at the next Visitation Court be presented for it, or an Action of Account may be brought against them at Common-Law, by the succeeding Church-wardens, to compel them to it, and their needful Expence and Disbursements upon the Account and Business of the Parish, upon making up their Accounts, shall be allowed them.

As for Presentments, they are not obliged to make them above once in the Year, where by Custom it has been no oftener a use, nor in any Diocess whatever, above twice a Year, unless to be at the Bishops Visitation; and for such presentments of every Parish-Church or Chappel, the Register of the Court where they are exhibited is to receive no more than 4 s. a Year for his Registering them. But the Church-wardens of their own Accord may oftener make their Presentments, *Cannon 116.*

One of the times of Presentments is ever to be about a Fortnight after *Easter*, and at that time they are to resign their Office to the succeeding Church-wardens, and the new Ones cannot be sworn before the old Ones have given in their Presentments, and every Parson, Vicar, or in their Absence, the

Curate

Curates in the said Presentments, are to joyn with the Church-Wardens, &c. And upon the refusal of the Church-Wardens to make Presentments, the Parson, Vicar, or their Curates in their Absence, may make their Presentments to their Ordinaries at all such times, and when else they shall think fit, *Cannon 113. 118.*

It is provided, that no Church-Wardens, Sides-Men, or Quest-Men, shall be cited or called, but only at the times limited to appear in the Ecclesiastical Court; or before any Ecclesiastical Judge whatsoever, for refusing to present any Faults committed in their Parishes at other times, and by the Ecclesiastical Law punishable; nor be further troubled after their Presentments delivered at the usual Time, unless it manifestly appear they have wilfully neglected, and wittingly omitted for Favour, Affection, or otherwise, to present some one or more Notorious Crime, or Crimes; or upon just Cause arising, to call them in order to explain their former Presentments; and the Ordinary in case of such wilful Omission, may proceed against them, as in the Ecclesiastical Courts in case of wilful Perjury, the Law has provided. *Can. 117.*

## C H A P. LXXVI.

*The Grounds of Presentments, or usual Articles given whereon to found their Presentments, that the Church-Wardens may know what to do in this Case.*

1. **W**Hether the Church, Chancel, Bells and Ropes be in good Repair: The Lord's-Prayer, Ten Commandments, and Creed be drawn in fair Letters; what Assessments are made for the Repair of the Church, and the Names of such as make Default in paying them; whether there be

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a Communion Table, Carpet, and Font in the Church, and all other necessary and useful Ornaments in Church and Church-yard, whether the Parsonage-house, and Out-houses are in good repair.

2. Whether the Parson, Vicar, or Curate, read the Common-prayer at Morning and Evening Service, with his Surplice, or preach every Lords Day, read Homilies, Catechise, keep Perambulation, preach sound Doctrine, and use no Seditious Expressions against the Government ; whether he celebrate the Lords-Supper at least three times every Year, once to be at *Easter* ; whether he Baptize Infants with God-fathers and God-mothers, Bury the Dead according to the Form prescribed in the Book of Common-prayer, preach in his Gown, visit the Sick, and pray with them ; whether he Marry clandestinely ; that he be a sober Man, live chastly, and be a peace-maker in his Parish ; whether once every Year at least, he read the Cannon to the Parishioners, and twice every Year the 39 Articles.

3. Whether the Parishioners at due Age resort to the Parish-church to hear divine Service, and there reverently and decently behave themselves ; whether any Work, or Sell Wares on the Lords Day, &c. Whether Vintners, Inn-keepers, or Ale-house-keepers, keep Tippling in their Houses on the Lords-Day.

4. Whether any be Married within the prohibited Degrees, or be Adulterers, Fornicators, Swearers, Drunkards, Blasphemers, Sorcerers, &c. whether all the Parishioners above 16 Years receive the Communion, at least thrice in the Year, *Easter* to be one time ; whether any unseasonably keep their Children from being Baptized, or Women decline the usual time of being Churched after their Delivery ; whether any bring not their Dead to be decently buried after

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## A Guide to Church-Wardens. 177

the Service of the Church ; whether any have been Married without the publishment of Banns, or License, or at unlawful Hours ; whether their Hospitals, Alms-houses, Schools, or Spittles, if any belong to them, be well and Godly used, or any thing detained from them ; what Legacies are given to pious Uses, and if the Parishioners are orderly placed in their Seats without Contention.

5. Whether the Parish-Clark or Sexton be duly chosen, can Write, Read, make the Responses, and be an honest Man. If the School-master, Usher, Physitian, Chyrurgeon, or Midwife, if any be in the Parish, Teach or Practise without License ; whether the Church-wardens be duly chosen in the Week after *Easter*, by the Minister and Parishioners, according to the Canon or Custom ; whether the old Church-wardens have been careful to keep the Church in Repair, to keep, and carefully secure all Furniture belonging to the Church, &c. And whether in the middle of divine Service, they walk out of the Church to visit Taverns, Inns, Ale-houses, &c. where Tippling may be used, and to see who are Loytering, or Exercising any Sports on the Lords-Day.

These are the chief things to be presented ; what other Matters may occur, are rather Accidental, than certain ; and therefore these may well suffice for the Church-wardens Instruction.

CHAP.



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### C H A P. LXXVII.

*Several Nice Matters laid down for the Instruction of Church-wardens in their Office and Duty, &c.*

**I**F a Bell be broke, the Church-wardens may have an Action against him that so broke it, or caused it to be broken, and recover Damages to the use of the Parish.

If any one take the Organs out of the Church, the Church-wardens may bring an Action of Trespass; for the Organs appertain to the Parishioners, and not to the Parson; so no Action will lye in the Parsons Name, nor can he Sue the Party that took them in the Ecclesiastical Court.

The Church-wardens have no Action at Common-law, to recover a Legacy never in their possession: But for any Goods and Ornaments of the Church, being once in their possession or custody, they may maintain an Appeal of Robbery against any one, or more Persons that steals them, and an Action of Trespass against him that does, without right, take them away, even against the Parson or Vicar so offending; and the Damages so to be recovered against such Offenders, shall be converted to the Use of the Parish. But if it so fall out, that those Church-wardens, from under whose Custody the Goods were taken, chance to die before they have brought any such Action, the succeeding Church-wardens have no Right by Law to bring an Action for the same Goods.

If a Church-warden presents that any Parishioner, certifying his Name, is a Railer, common Disturber, or Sower of Discord among the Neighbours, unless it be done in the Church or Church-yard, a Prohibition lies, if the Presentment be made in the Ecclesiastical Court; because it is the  
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Leet, and not in the Church-Warden, if the Offence be committed elsewhere, that is to present it.

If a Suit be commenc'd by the Church-Wardens in the Court Ecclesiastical, for a Church-Way, claimed as a Right belonging to all the Parishioners by Prescription; here a Prohibition lies, it is a Temporal Case, and not in the Jurisdiction of the Spiritual Court.

If any one be Sued in the Ecclesiastical Court, for refusing to Feast and Entertain the Church-Wardens, and those that go with them in their Perambulation or Procession, with Bread, Cakes, Cheese and Ale, though his Ancestors living in the same House had done it on the like occasions, time out of Mind, a Prohibition will lie against it; for that in such Cases, the Church-Wardens claim it in the Nature of a Corody.

And now for Brevity sake, I pass over some other little Matters, not mainly significant, belonging to this Office, directing the Church-Warden for his better Information, or many things that concerns his Office, to peruse the Office and Duty of a Constable, where he is jointly impowered to act with him in many particulars, not here so expressly set down, and in which he may see more copiously what in Criminal Matters he is to do.

*The End of the Office of a Church-Warden, &c.*

*The Duty and Office of the Overseers of the Poor.*

C H A P. LXXVIII.

*The Office of the Overseers of the Poor; how to be Qualified and Chosen, where they may Act, and what Degrees of Poor they are to have regard to, in order to relieve them.*

**T**HIS is an Office very commendable, and of great Trust, chiefly requiring Diligence, and

a good Conscience in the performance of it. It is of great Antiquity, and the *Roman Senators* gloried more in this, than in all their honourable Trusts and Promotions; they were prouder to be stiled Patrons of the Poor, than of any Dignity whatsoever; and well administred, it gains not only a good Name here, but has Gods Blessing along with it, to make those that well discharge their Duty, Eternally happy hereafter.

These Officers ought to be credible, honest, substantial Men. They are to be yearly chosen, and joined with the Church-wardens of the Parish, in the Oversight, due Regard, and Care of the Poor; they are to be made choice of by two or more of the Justices of the Peace, one to be of the *Quorum*, who are enjoined yearly, at *Easter*, or within a Month after, under their Hands and Seals, to appoint 4, 3, or 2 substantial House keepers, according as the Parish requires to be joined with the Church-wardens, to oversee and look to the Poor in their Parish, according to the Statute of 43 *Eliz. Chap. 2.* 21 *Jac. 1. Chap. 28.*

In this Case the major part of the Officers, without the remainder, may do any thing belonging to their Office, with the Allowance and Consent of them, either in particular or general, with two Justices of the Peace, one to be of the *Quorum*, and when they are not hindred by just Occasion, the Excuse to be allowed by two Justices of the Peace; they are to meet on the Lords Day in the Church monthly, after Evening prayer, to consult of such Matters relating to their Office, as may turn to their best Advantage; and upon neglect, without such reasonable Excuse, are liable to forfeit 20 s. for every Default, 43 *Eliz. Wingates Stat. Tit. poor People.*

And if according to the 43 of *Eliz.* they be not regularly, and duly appointed, then every Justice

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of the Peace, or Head Officer of that Division forfeits ; I. which may be levied by a Warrant of Sessions, and employed to the use of the Poor, where such Default is made.

Of the Poor, there are reckoned 3 sorts or degrees ; and first, those by Defect and Impotency, as the Aged and Decrepid, being past their Labour.

The Infant, Fatherless and Motherless, not capable of being set on Work.

Those naturally disabled, either in Wit or Members, as the Lunatick, Idiot, Lame, Blind, and the like, not being able or capable to Work ; and Persons being visited with grievous Sickness and Diseases, though casually, however, being for a time thereby rendred impotent.

These in their degrees are to be provided for, and the Overseers are to take care they have necessary Relief, and such proportionable Allowances as shall appear convenient, according to the measure and continuance of their Needs and Maladies.

*Secondly*, Such Poor by Casualty, such as are casually disabled or maimed in Body, as Labourers, Soldiers, Marriners, &c. Maimed or so disabled in their proper or lawful Calling. Also the decayed Householder, by casualty of Fire, Losses at Sea, Suretyship, Robbery, or Decay and Loss in Trade, &c. A poor Man or Woman over charged or burthened with Children, and not able to keep them by their Labour. All these, and the like, having Strength and Ability of Body, but no means whereby to sustain themselves or Children, are to be set to work ; but if the profit thereby arising, procure not a sufficient necessary Maintenance, so that they cannot live thereby, they are Objects of Charity, and to be relieved at the Charge of the Parish, in some reasonable

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sonable proportion and measure, as their respective Wants and Necessities shall render them deserving in the just Opinion of the Overseers, under whose Care they are.

*Thirdly*, Such as are Thriftless, who have wasted what they had by Prodigality and Rioutousness, Playing, Drinking, Debauchery, and the like, or such as are Dissolute, Strumpets, Pilferers, Idle Persons refusing to Work, Vagabonds that will settle in no place, nor be content with Service; and for these the House of Correction is appointed, where they are to be sent; and if of able Bodies, put to hard Labour, to maintain themselves by it, without being chargeable to the Parish, Town or County for any Allowance; however they are not to be suffered to perish for Want; but in case any of these last sort prove Impotent by Sickness, want of Ability of Body, or that their Work will not supply what is needful for the Necessaries of Nature, then in their extream Necessity there must be an Allowance by the Town, &c. *Dalt. Just. P. Chap. 73. Folio 170.* And where the Parents are able to Work for their Children, so that it will maintain them, they may be compelled to do it; but if overburthened, the Overseers at their Discretion, may take what Children they think fit off their Hands, and put them Apprentice, or otherways dispose of them to Nurses, or else allow the Parents something to enable them to keep them.

The Father, Grand-Father, Mother, Grand-Mother, Children, and Grand-Children, are obliged to relieve those so Allied to them, that are Poor and Impotent, if themselves are of Ability, in such manner as the Justices shall order it at their Quarter-Sessions, by assisting the Party or Parties, and upon Obstinate Refusal, or Neglect to obey their Order, a Penalty of 20 s. every Month

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is forfeited to the poor of the Parish, to be levied by the Church-wardens, Overseers, or one of them, by Distress and Sale of the Offenders Goods, having first to that end, received a Warrant under the Hands and Seals of two Justices of the Peace, one to be of the *Quorum*, and in defect of such Distress, the Justices may commit the Offender to Prison without Bail or Mainprize, to remain there till the forfeiture be paid, 43 *Eliz.* 2 *Dalt. Just. P. Chap. 73. Folio 156. Resol. Judges* 16, 17. But a Grand-father-in-law, if he has no Estate with the Grand-mother in Marriage, or that after comes to her, is not held liable to this, though he brings her considerable of his own, or is afterwards enabled by his Industry, or at least if the latter, which is held doubtful, he is obliged to it no longer than his Wife lives. *Second Part of Bulst. Reports, Fol. 245, 246, 247.*

If any poor beg in the Parish, a License must be granted for it by the Overseers, and if in the High-ways, by those Overseers. And by an Order of Sessions, a Cottage may be erected on the waste of a Mannor, and poor Inmates may be Lodged therein; but it is afterward to be employed to no other Use. And such poor as cannot get Work, and are able, are to be set on Work by the Overseers; and a Justice of Peace may send such to the House of Correction, that being employed by them and the Church-wardens, will not Work, being not otherways able to maintain themselves, and they with the consent of two Justices of Peace, or more, one being of the *Quorum*, may set up, occupy, and use any Mystery, Trade or Occupation, for the better Relief of the poor in the Parish, Town or place within their Districts, to set them on Work, which is very commendable, and may be wished it were more put in practice.

## C H A P. LXXIX.

*What relates to the Office of the Overseers, in taking Care to put poor Children Apprentice, and what the Indenture is required to find them, &c.*

**I**N this, Care must be taken, that they must be so placed, as not again to be chargeable to the Parish, and that they may learn such suitable Crafts and Mysteries, as when their Time expires, with Labour and Diligence, they may be enabled to keep themselves and Children, their Age to be above 7, and under 15, when they are so placed; and in doing this, the Overseers must have the Consent of two Justices of the Peace, and they may bind Men-children to the Age of 24, and the Female to the Age of 21, or till she be Married, which first shall happen; but it must be within the Parish or Hundred, and they may give Money, if they cannot put them off without, and the Masters refusing to take them, when so offered, may be presented and indicted for the same, upon the Statute of 43 Eliz. at the Assizes or Sessions of the Peace, and Parents refusing to let them be so put Apprentice, without good Cause shewed for it, may, by the Justice, be bound over to answer the Default, and the Children refusing, may be sent to the House of Correction, till they will comply. He or she must be bound by Indenture, and the word Apprentice specified in it, or else it is not binding. The Form of which, for the better Transcript on occasion, by those that are Ignorant of it, I shall here set down.

*The Form of an Indenture of an Apprentice, put out and Bound by the Overseers, &c.*

**T**HIS Indenture made the 20th of December, in the Sixth Year of the Reign of our most Gracious



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Gracious Sovereign Lady *Anne*, by the Grace of God, of *Great Britain, France and Ireland*, Queen, Defender of the Faith, &c. *Anno Dom. 1707.* witnesseth, That *A. P.* and *L. G.* Overseers of the poor in the Town of *Nottingham*, and *K. M.* Church-warden of the same Town, by and with the Consent of *G. B.* Esq; and *L. G.* Esq; two of her Majestys Justices of the Peace of the County of *Nottingham*, have by these presents placed and bound *L. C.* being a poor and fatherless Child, as an Apprentice to *W. H.* of *Nottingham* aforesaid; Shoe-maker, and as an Apprentice with him the said *W. H.* to dwell from the day of the Date of these presents, until he the said *L. C.* shall come to the Age of 24 Years, according to the Statute in that Case made and provided, by and during all which Time and Term, the said *L. C.* shall the said *W. H.* his Master, well and faithfully serve, in all such lawful Business as the said *W. H.* shall put him the said *L. C.* unto, according to his power, Wit and Ability; and honestly and obediently in all things shall behave himself toward his said Master, and all the rest of the Family, of the said *W. H.*. And he the said *W. H.* for his part promiseth, covenanteth and agreeth, that he the said *W. H.* the said *L. C.* in the Art and Mystery of Shoe-making, in the best manner that he can or may, shall Teach, Instruct or Inform, or cause to be Taught, Instructed or Informed, as much as thereunto belongeth, or he the said *W. H.* knoweth: And also during all the said Term, to find unto him his said Apprentice, Meat, Drink, Linnen, Woollen, Hose, Shoes, Washing, and all other things necessary or needful for an Apprentice. In Witness whereof, we the said *W. H.* and *L. C.* have interchangeably set our Hands and Seals, the Day and Year of Date abovesaid.

Note

*Note*, in this Case the Binding is effectual to all Purposes, as if the Children were of full Age, and did Bind themselves by free Consent of Indenture and Covenant, and they so Bound, may safely be received and kept by their Masters or Mistresses, to whom they are Bound; only if She be a Female, her Marriage will release her, though the time of her Indenture be not expired, as in all other Cases of Indenture on that account; and here otherways, neither Sex can be discharged from their Masters or Mistresses, to whom they are Bound as Apprentices, but by four Justices of Peace at least in open Sessions, or else by the Agreement of the Master, &c. and Apprentice, under the Master's Hand in Writing.

#### C H A P. LXXX.

*How far the Overseer is concerned about settling the Poor, and what otherways relates; with some nice Points relating to Bastards, &c.*

**B**Y Settlement of the Poor, it is here meant such as are likely to be troublesome and chargeable to the Parish or place where they reside. And by the 13 and 14 of Charles 2. Chap. 12. The Overseers and Church-Wardens making their Complaint to any Justices of the Peace within four days, after any Person that is poor and likely to trouble the Parish, cometh to settle in a Tenement under 10 l. by the Year, two of the Justices one being of the *Quorum*, by Warrant under their Hands and Seals, may remove such a Person to the Parish where they last had a Legal Settlement by the space of 40 days or more, unless Surety can be by them given, that the Justices shall approve of to secure the Parish, &c. from Damages or Charge

ges that may ensue, and all Persons agrieved have free Liberty to appeal to the Quarter-Sessions.

In Harvest or Work time, poor Persons settled in a Parish, having a Certificate under the Hands of the Minister of the Parish, one Church-warden, and one Overseer of the Poor, declaring them Inhabitants there, may go into any of the adjacent or distant Parishes to Work, and if they do not return, by reason of Sickneſs or any other Impediment, it ſhall not be accounted an Impediment, though they ſtay after their Work is done; and if any return from the Parish from whence they are removed, it is in the power of the Juſtice of the Peace to ſend them to the Houſe of Correſtion, where they may be puniſhed as Vagabonds, or, at his Diſcretion, he may ſend them to a common Work-houſe, there to be employed at hard Labour, and upon the Refuſal of the Church-wardens or Overseers of the Poor, to receive them, and provide them Work, &c. they may by the Juſtice, be bound over to answer it at the Sessions or Aſſize.

In Caſe of a Baſtard Child born in any Parish, the Church-wardens and Overseers for the Poor, may, in ſaving the Parish harmleſs, ſeize ſo much Goods, Profits or Lands to its uſe, belonging to the Lewd Mother or Reputed Father, as will diſcharge the ſaid Parish, or toward the diſcharging of it, from ſuch Charges as may thereby incur, which is to be awarded and ſettled by two Juſtices of the Peace, and confirmed at the Sessions; and there an Order may be made to the Church-wardens and Overseers, by Sale, or otherways to diſpoſe of the Goods, as to them ſhall ſeem meet, and the profits, or ſo much of the profits of their Lands, as by Sessions ſhall be ordered. *Vide* if the Act of 13 and 14 Car. 2. c. 2. be revived.

No Man is to be put out of his Dwelling in a Town were he is lawfully ſettled, or to be ſent to

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to the place of his Birth, but a Vagrant Rogue, nor to his last Habitation, nor is he to be maintained by the Town, unless he be Impotent, but they ought to settle themselves to Labour, if they are able, and can get Work, and if Work cannot be gotten by them, the Overseers are to set them on Work, and if after they wander begging in other Parishes, they may be charged as Vagabonds, and sent to the place of Birth, *Dalt. J. P. C. 84. Fol. 109.*

If a Scholar in a Grammar School or University, be suspect to be an Incumbrance, if he doth become Impotent, and is like to be a charge to the Parish where he is, he may be sent to his Parents, if he have any, otherways to the place where he was last legally settled before he came to School, *Resol. Judges 1633. Sect. 32.*

If a Woman be sent to the House of Correction, and there Delivered, the Child must be sent to the Parish whence the Mother came, and there relieved.

If a Woman be Travelling, and hath her Child with her, and is for any Fault or Breach of Statute apprehended and sent to Goal, although she be Executed for her Crime, the Child is not to be charged on the Parish where the Goal is, but must be sent to the place where it was Born, if it can be known, otherways to the place where the Mother was apprehended, according to the Opinion of Sir Nicholas Hide, 3 Car. 2.

If a Woman Unmarried be hired Weekly or Monthly, or by the half Year or Year, in a Parish, and there be gotten with Child, and so goeth into another Parish, and there for 2 or 3 Months is settled in Service, and being then discovered to be with Child, in this case she must be settled in the Parish where she is, and must not be sent to the Parish where she was before, *Resol. Judges 1633.*

*Sect. 12.*

*Sett. 12.* If a Woman be delivered of a Bastard Child in one parish, and so departeth into another parish with her Child, in this case the Child after being Nursed, is to be sent to, and settled in the place where it was Born, and not to remain with the Mother, *Resol. Judges 1633. Sett. 23.*

C H A P. LXXXI.

*The Office of the Overseers of the Poor in making Rates, and how they must behave themselves therein; and of making and delivering up their Accounts upon going out of their Offices, &c.*

**T**HE Overseers for the poor, with the Churchwardens, or the major part of them, for enabling them to perform the things they have in charge, may raise weekly, or otherways, by Taxation of every Parson, Vicar, and the Occupier of Land, House, or Tithes, Colemines, or Underwoods salable within their parish or divisions; such a Sum as in moderation they shall think fit; but the Rate must be allowed and confirmed under the Hands of two Justices, one being of the *Quorum*, and then may be levied by Distress and Sale of Goods, upon refusal of payment or neglect, by Virtue of a Warrant from any other two Justices, one being of the *Quorum*, rendring the Overplus to the Owner, and for Default of Distress, two Justices may commit the Party to remain in prison, without Bail or Mainprize, till payment be made, or the Justices think fit to discharge him, 43 Eliz. Chap. 2. Dalton Just. P. Chap. 73. Folio 148. Wingates Stat. Tit. poor People. And these Rates ought to be made according to Mens real and visible Estates within the place

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place only, and not according to Estates elsewhere, and further

Observe, that a Parish in Reputation is deemed good within this Law: For granting G. a Parish very antient, having Officers in it, nevertheless here is a Town within the Parish, that for time out of mind, at least a long time hath been used and reputed as a Parish, and hath all Parochial Rights, as Church-wardens, &c. in such a Case it may be rated as a Parish towards the Poor, *Hutton's Report, Folio 93.* and others.

And there must be Care taken in rating and levying this Tax, for it must lie on the Tenants occupying Land, &c. and not on the Landlord, in nor out of the Parish, for the first is only chargeable for the Land, *Bulstrode, 1 part Rep. 354.*

Any Parson having a full Tenth in a Parish may be rated a Tenth part, *Resol. Judges 1633 Sect. 33.*

If any Person occupy Land lying in several Parishes, he must in this Rate be accountable for them proportionably in the Parishes where they lye; but it seems reasonable that for his personal Estate, he should be chargeable in the Parish where he is an Inhabitant.

In rating Stock or Goods, it is to be rated according to the proportion of Land-Rent, as five or six Pounds a Year in Land, to be held equal with 100 l. in Goods or Stock.

In a Parish where the Inhabitants, by reason of their own Poverty or Fewness, are not able to relieve their Poor, two Justices, one being of the *Quorum*, may by rate, Tax other places and Parishes within the Hundred, or all the Hundred, if Necessity requires it; and this not proving sufficient the Justices in their Sessions may Tax the County in part, or wholly if they think fit, *43 Eliz. Wines Abridg. Stat. Tit. Poor People.* And if any

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Person find himself agrieved by any Act done by the Justices of the Peace or Overseers, they may for Redress apply themselves to the Justices in the Quarter-Sessions, *Dalt. Just. P. Chap. 73. Folio 160, &c.*

If a Parish shall reach to, and lye in two Counties, or one part thereof to lye in any City, or Corporation Town where there are proper Justices, in that case the Justices of each County are to meddle so much as appertains to the Party lying in the County of which they are Justices, and so of the other parts; and yet the Overseers shall without dividing themselves, Execute their Office in all places within the said Parish, but shall give up their Account to the Justices or Head Officers of both places, *Wingates Abridg. Stat. Tit. Poor People, 43 Eliz. Chap. 2. Daltons Just. P. Chap. 73. Folio 156.*

The Overseers of the Poor are within 4 Days after their Year is expired, and other Officers Nominated their Successors, to give up their Account in Truth before two Justices of the Peace, one to be of the *Quorum*, chiefly to this purpose.

1<sup>st</sup>. What Stock of Money they have Received or Rated, and not come to their Hands. 2<sup>d</sup>. What Stock of Stuff or Ware is in their own, or in the Hands of any of the Poor. 3<sup>d</sup>. What Apprentices they have put out, and Bound according to the Statute, 4<sup>th</sup>. What Poor they have set to Work or Relieved. 5<sup>th</sup>. What Poor they have suffered to beg or wander out of the Town in the High-ways, or in their Town without their Directions. 6<sup>th</sup>. Whether they meet Monthly to consider of such Matters as are properly belonging to their Office. 7<sup>th</sup>. Whether they have made their Rates indifferent upon the Parishioners, according to their Ability. 8<sup>th</sup>. Whether they have truly endeavoured to gather and levy all Assessments.



sessments. 9th. Whether in them there has been any neglect of the Justices Warrants, directed to them on any Account, especially those for collecting any Forfeitures, according to the Statute, 43 *Eliz. Chap. 2. Dalton Just. P. Chap. 73. Fol. 153.*

**Note**, by the Statute made for the Burying in Woollen, 30 *Car. 2.* the Justices may not allow the Accounts of the Overseers of the poor, till such time as they have given them an Account of the Burials and Certificates, and of their levying the penalty by that Statute directed.

If they refuse to give in their Accompts, or make and yield a true and perfect Account to the said Justices, of such Money and Stock in their Hands, as has been mentioned, two Justices of the Peace, one being of the *Quorum*, may commit them to the common Goal, not to be dismissed till they shall render a true Account, and payed or satisfied the succeeding Overseers, so much of the Sum and Stock, as shall any ways appear to be remaining in their Hands, and upon making a false Account lye liable to be bound over to the Sessions or Assizes, where an Indictment may be preferred against them, *Dalt. Just. P. Chap. 3. Folio 111.* Or the Justices, or any two of them may grant a Warrant to the succeeding Overseers, to levy the Sum upon the Goods and Chattels of the Offenders, by Distress and Sale, and for want of such Distress may commit them to Goal till satisfaction be made. But note, upon Sale, the Overplus is to be returned to the Owner, 42 *Eliz. Chap. 2.*

If it so happen that any part of such Stock shall be found, or known to be in the Hand of any Poor, upon refusal of delivery, two Justices may by Warrant cause the value to be levied, or for want of wherewith, on which to make Distress, may commit the Party to prison, as in the former Cases. *Dalt. Just. P. Chap. 72. Ibid.*

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And for these and all other Faults and Negligencies of Church-wardens and Overseers, relating to the Execution of their Office, as to the Poor, &c. for every such Default made by any of them, he is to forfeit 20 s. upon Proof, by Confession, or Examination of Witnesses, to be levied by Warrant of two Justices of the Peace, by Distress and Sale of Goods, or for want of it the Offender to be Imprisoned, and the Money so levied to be employed to the use of the Poor of the Parish, *Alt. Just. P. Chap. 73. Folio 155. 43 Eliz. Chap. 2.* so that by the Law great care is taken that these Officers shall not be wronged in their just Rights, nor the Parish or Poor be wronged by them.

### C H A P. LXXXII.

*The Office of the Overseers of the Poor in receiving Fines to the use of the Poor in some Respect; Of Destroyers of Game, unlawfully Fishing, also relating to Measures, and Burying in Woollen.*

It is the Business of the Overseers of the Poor, to receive such Fines or Forfeitures as accrue from Offences in such, as in the Night time Kill Warren take any Coneys upon the Borders of Warrens, such Grounds where the Owner may lawfully keep Coneys, the Parties so Killing or Destroying, being Proprietors, nor allowed by the Owner. Also of such as use Hare Pipes, Snares, or such Implements, or take Fish by any Nets, Angling, or other Device, in any Water or River not lawful, or shall be assisting thereunto, without the consent of the Lord of the Mannor or Owner of the Water; and the Sum for these Offences is to be amerced by the Justice of Peace before whom the Party offending shall be convicted, the Case not exceeding Ten Shillings, over and above that the Owner may have or recover his  
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Damage sustained for ; and the Party for Default of payment may be sent by the Justice to the House of Correction, for any time not exceeding a Month, unless he enter into Bond with one or more Sureties to the Party aggrieved, the Sum not exceeding Ten pounds, never in the like manner to offend any more ; and for these Offences the Offenders Goods are liable to Distress and Sale ; but then the Imprisonment must be remitted upon satisfaction that way made, 22 *Edw. 2. Car. 2. Chap. 24.*

As to Weights and Measures, the Overseers for the poor as well as other Officers, ought to have a special Regard to them, and in this case there ought to be one Weight, one Measure, and one Yard, according to the Exchequer Standard, in every part of the Realm, as well within as without places privileged ; and every Measure of Corn is to be stricken, and those that keep different Weights and Measures, not agreeing in respects with the Standard, to buy and sell by, being convicted thereof by the Oath of two Witnesses, before any Justice of Peace, or Head Officer of the Town or place where the Offence is done, shall forfeit Five Shillings, to be levied by the Church-wardens or Overseers of the poor of the Parish where the Offence is committed, by Distress and Sale of Goods upon Warrant, and for want of such Distress the Offender to be committed to Prison without Bail till payment is made, and if any Person be troubled for any Matter concerning his Office, in this case he may plead the General Issue, and give in Evidence, the Act of 17 *Car. 2.* And to have treble Costs if the Suit so brought prove vexatious, *Dalt. Just. P. 1. Folio 246. &c.*

The penalty of 5 *l.* is to the use of the poor where any persons shall be buried in any Garment  
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Winding-sheet, Shroud or other Materials not made of Sheeps Wooll only; or if the Coffin the Dead Body is put into, be lined or faced with any thing made of any Material but Sheeps Wooll; and the Church-wardens and Overseers of the Poor are to take Care of this in all Respects, that the Forfeitures be duly levied. See more, 30 Car. 2. Chap. 3. &c.

And thus much briefly for the Office of the Overseers of the Poor. See more in the Office of a Constable and Church-warden, where many things belonging to their Office are intermingled, and therefore here omitted, or but slightly touched on.

## C H A P. LXXXIII.

*Of Fairs and Markets, Toll and Toll-keepers, Clerks of Markets, their Office and Duty in some particulars, &c. Measures, and Measuring, Sealing, &c.*

A Fair must be kept no longer than the Grant or Use by Custom will Warrant for what is Warrantable; and Goods so Sold after the Expiration of the Time, as Merchandize, &c. The Seller shall forfeit to the Queen double the Value of what is Sold, and the prosecutor shall have the fourth part; the Fair must be duly Proclaimed by the Sheriff, or Lord of the Fair, and the Time it is to continue mentioned, the place or ground appointed, set out, and care taken that there be no Riots or Disturbance, but an orderly keeping of it during the time it lasts.

Where there is a Beast Fair for Horses, Mares, Geldings, and other Cattle, they must have their appointed places, that those that resort thither may have a certainty where to find them. And one sufficient Person or more, must be appointed to take Toll, and keep the same place, from Ten

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in the Forenoon, every Day till Sun-set, during the Time of the Fair or Market, upon pain to forfeit for every Default 40 s. And in Tolling, the party thereto appointed must have before him the parties Bargaining, upon his Tolling any Horse, Mare, &c. And must Write in his Book the Christian Names, and Sir Names of all the Parties; also their Dwelling places, with the Colours, and some particular Marks of the Horse or Mare, &c. so Sold or Bargained for, on Penalty to forfeit for every Default 40 s. and he is to have one credible Person known to him, to Vouch the Horse or Mare, &c. and testifie his Knowledge of the Seller, and his Name and place of abode must be entred with the others in the Book, with the Colour, Mark, or Price of the Horse or Mare, Sold or Exchanged; and the Buyer requiring it, may have a Note in Writing out of the Book, Reciting the Contract and Toll-man's Hand thereto, for which he may take Two pence.

If any Toll-keeper suffer a Sale to pass without a Voucher, unless he well know the Party, and every Party making a false Testimony, or A Vouchment, or every Seller unknown, not bringing a Voucher, and causing the same to be entred, forfeits Five Pounds, one Moiety to the Queen, and the other to the Prosecutors, and the Sale of the said Horse, &c. to be void. Yet notwithstanding such Vouching, the Owner of a Stollen Horse, &c. if Sold, his Executors or Administrators, claiming him within six Months after the Stealing, may Redeem at the price he was Sold for, making proof that it is his, and that it was Stollen, by two sufficient Witnesses before a Justice of the County where he is found, or the Head Officer or Magistrate of a Corporation, and the price to be such as the Buyer upon Oath shall testifie before the Justice, he paid for him; and if the Stollen Horse

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be not Sold in open Fair or Market, and lawfully Toll'd, the Right is in the Owner from whom he was Stole, and he may Seize or Replevy him in any place where he finds him.

If any Person Buy Oxen, Goats, Sheep, Calves, Heifers, Lambs, &c. alive, he shall not Sell them again alive till he has kept them in his Pasture by the space of five Weeks.

As for Measure, there shall be only the *Winchester* Bushel, and no other Bushel, and that to contain 8 Gallons; and who so sells by any other, according to the 22 *Car. 2. Chap. 8.* forfeits 40 s. And upon the Clerk of the Market's refusing to Seal such Measure as shall be full Gauged, he forfeits for the first Offence 5 l. for the second 10 l. Or if the Clerk of the Market exact, or take more Fees than is due, that is, above one penny for Sealing a Bushel, a half-penny for half a Bushel, and one Farthing for Measures of less proportion, he incurs, and shall undergo the penalty in the Statute, *Car. 1.*

A Brass Bushel is to be Chained to a Post, or publick place in the Market-place, at the Charge of the Person taking Toll, for the publick Use of Measuring, upon penalty of forfeiting of five Pounds, 22 *Car. 2. Chap. 8.*

Whosoever shall Sell or Buy Corn without Measuring, being thereunto required, so Selling or Buying it in Sacks, or Bags, or in any other thing, shall forfeit the said Corn, or the value thereof to the Party making his Complaint of this Offence against the Statute, 22 & 23 *Caroli 2. Chap. 12.* And upon Complaint the Defendant by the Oath of one or more Witnesses before a Justice of the Peace, must prove that he or they did Buy or Sell according to the Statute of 22 *Caroli 2.* and 23 *Caroli 2.* or else pay the Forfeitures by the latter directed, which upon Warrant may be

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Levied by Distress and Sale of Goods; the Warrant to be given under the Hand and Seal of one or more Justices, before whom such Conviction shall be, one half to the poor of the Parish where the Offence is committed, and the other to the Informer. *Ibid.*

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*The Duty and Office of the Surveyors of the High-ways and Bridges, Scavengers, in London, Westminster, Borough of Southwark, &c. With more particular Directions what they are to do and observe therein, and how to behave themselves, and order Matters for the due Discharge of the said Office.*

### C H A P. LXXXIV.

*Surveyors of the High-ways, their Office and Duty in mending the Ways, and Rating.*

**T**Hough Ways are generally called the Queens High-ways, yet of Ways there are three sorts: 1. A Way where Men have a just Right to walk in, Pass and Repass. 2. A common Foot way and Horse way. 3. A Way for Carts and Wains, and all sorts of Carriages; and this latter is most properly called the Queens High-way, free for herself and Subjects to pass and re-pass at all times; whereas some in the other Sense, are Ways only to Grounds, Houses, &c. And Ways by Custom; and some again upon Sufferance in the publick Ways. All Nuisances or Stoppages are Indictable, especially if not timely removed or Notice given, or the Lord of the Soil for any digging or spoiling the High-ways, may bring his Action against the Offenders.

The Surveyors duly chose by the other Officers, with the Advice of the Inhabitants, or the

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major part of them upon publick Notice before given, are diligently to oversee those that Work on the days appointed, for the digging and carrying Gravel and other Materials, for mending such Ways where they shall find them defective, giving them Directions in order thereto; and upon publick Notice or Warning, the Persons so qualified are to send their Carts and Labourers.

Every Person having in his own Occupation a Plough-Land, in Tillage or Pasture, or keeping a Plough or Draught in the same Parish, is liable to send, according to the Fashion and Custom of the County wherein he resideth, or is so legally Charged, a Wain or Cart with Oxen or Horses, fit for Carriage and work of this Nature, attended by two able Men, who shall do such Work as shall be by the Surveyors appointed them, for the space of days, working 8 hours every such day, under the penalty of forfeiting for every days Default 10 s. and every other Householder, Cotter or Labourer, not being a hired Servant, shall in Person attend the Service to Work, or send an able Man in his stead, under penalty for every days Default to pay 12 d. and all other Persons, being no otherways chargeable; but Cottages being Subsidy 5 l. in Goods, or 40 s. by the Year in Lands, or above, they must find two able Men to work in the Service.

It is in the Discretion of the Surveyors, if there be more Carts, Wains, &c. than are necessary, to appoint two able Men instead of a Team, on forfeiture of 12 d. each, in case of Defect. And if in 6 days the Ways cannot be conveniently mended, as is the usual time, they may set a farther time; but then they must make payment for it according to the Rate of the County; and if hereupon there be no Agreement; the Justice may settle the Rate.

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If Materials be wanting, the Surveyors may take the small loose Stones from any Mans Quarry, and such Rubbish as he finds there, it being near the Road, without paying for it, but must not dig nor take away the great Stones. They may dig Gravel and Sand for the like use, near any High-way, in other Mens Ground, not being their House, Yard, Orchard or Garden, without paying for it, the Pit not exceeding 10 Foot in breadth, and the like in weth; which, as soon as the Work is over, must be covered up, and made good at their Charge who cause it to be digged: or if it be not so filled up within the space of one Month, they forfeit 5 Marks, to be recovered by the Owner, by Action of Debt.

All Owners of Ground adjoining to the Highways are to keep their Hedge low and upright, that the Boughs or Brambles standing out, may not hinder or offend Travellers, and that so the Sun may shine on the Ways, to dry them; and such as are negligent in this, may be presented and Indicted, and thereupon forfeit 10 s. beside their Charges.

And in case Ditches are stopped up with Mud and Ouse, that should be drains to the High-way so that the Water lies in it, and cannot have a current Passage, the Owner of such a Ditch or Water-drain shall forfeit 12 d. for every Rod so neglected to be Sowed, by 18 Eliz. Chap. 10. And the Surveyor hath power to make Conveniencies for draining the High-ways, as Sluices, Outlets of Water, &c. into any Mans Ditch or Ground, for the better and more speedy Convenience of passing the Road. If any Man upon Cleansing a Ditch, cast the Soil into the Road and suffer it to lie there above the space of six Months, he is liable to pay 12 d. per Load for as many as shall be adjudged to be there.

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If a Justice of the Peace shall, upon his own Knowledge of any Nuisance on the Road, make a Presentment, it stands good, and two Justices, one being of the *Quorum*, may make the Amercement or Fine, to be levied on the Offender.

These Officers, *viz.* Surveyors, have in their Care all Bridges within their several Parishes or Liberties, to see they are kept in good Repair, from time to time, at the Charge of the Parish, Hundred, or as the Custom has been, and is continued; and if a Custom has therein ceased for a time, it may be revived; for in some Cases, particular Persons are bound by Tenure of Land, &c. to repair part, or the whole of a Bridge, &c. without a Parish Charge. But to instance these particulars, would be too tedious for my intended Brevity; and many times a whole County lies chargeable to be Rated for the Repair of a Bridge, &c.

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### C H A P. LXXXV.

*The Office of a Surveyor, in draining the Roads, making Presentments; and in what Case a Justice of Peace may Present; how the Surveyor shall be Reimbursed for Moneys laid out for Materials, &c.*

A Surveyor may Cause a Water-course or Spring in the High-way, within his Parish to be turned into another Mans Ground, or his Ditch next adjoining to the said way, for the Conveniency of keeping the Road dry, as in his Discretion shall seem fitting., *Diall. Chap. 50. Fol. 103.*

The Surveyors, or any one of them, have power to present to the next Justice of the Peace every Default, upon the 2. and 3. of *Philip and Mary*,  
*Chap.*

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*Chap. 8.* and *5 Eliz. Chap. 14.* within one Month after the Default made, on the penalty of 40 s. and the Justice under penalty of 5 l. must certify the same at the next Quarter-Sessions, where the Bench of Justices have power to enquire of the Default, and to set such Fine on the Offender as any two of them, one being of the *Quorum*, shall think fit, *5 Eliz. Chap. 13.*

If any Justice of the Peace present in Sessions upon his own Knowledge, it shall be a good Conviction, whereupon any two of the Justices, the one being of the *Quorum*, may assess a Fine as well as if the Matter had been found on the Verdict of 12 Men: but in this Case the Offender shall be as in other Cases, admitted to his Traverse, *5 Eliz. Chap. 13. Rast. 199.* and all such Fines and Forfeitures are to be bestowed and employed towards the mending and bettering of the High-ways in the Parish where the Offences are committed, *Wing. Abridg. Stat. Tir. High-ways. 2 E. 3 P. & M. Chap. 8.*

Where Surveyors have laid out their Money for Materials to mend the Ways, without which there were none fitting to be had, it is enacted 2 and 3 of *William and Mary*, That upon notice given by the Surveyors of High-ways, to the Justices of the Peace at their Grand Sessions, and Oath made, of what Sum or Sums of Money are expended to that Use and Behoof; the Justices thereupon, or any two of them, under their Hands and Seals, may cause an equal Rate to be made for the reimbursing the Surveyor or Surveyors the Moneys by them to the Use aforesaid laid out upon all the Inhabitants of such Parish or Township where it was expended, in Rates according to the Rules and Methods prescribed in 43 *Eliz. Chap. 2.* for the Relief of the Poor; which Act directs the Tax to be laid on each individual Inhabitant

habitant, as Parson, Vicar and others; and every Occupier of House and Land, Tythes Improprate, Impropriations of Tythes, Colomnies or Salable under Woods in the said Parish, so to be Rated; and the Rate so allowed and settled by the Justices in their said Sessions, shall be gathered and collected by the Surveyor or Surveyors of the High-ways; and if any one refuses to pay the Money according to the Rate assessed, it is lawful for the Surveyors to levy it by Distress and Sale of the Goods and Chattels of the Persons so refusing, reserving reasonable Charges for making the said Distress, and rendring the Overplus to the Owner, if any there be.

By the 3 and 4 of *William and Mary* it is farther provided, that whereas the Fines imposed and set on the Presentment of a Justice of the Peace, and other Fines and Issues, for not repairing the High-ways, being oftentimes returned into the Court of *Exchequer*, and other Courts, and so levied upon some particular Inhabitants, and no Provision made to reimburse them; now on the contrary, Fine, Issue, Penalty, or Forfeiture, shall not for the future be returned into any of the said Courts, but be levied and put into the Hands of the Surveyors, to be applied towards the Repair of the said High-ways; and if it be hereafter levied on one or more of the Inhabitants, his or their Complaint for Redress, lies to the Justices of the Peace, at their special Sessions; and they, or any two of them, by Warrant under their Hands and Seals, may cause a Rate to be made, according as before set down, for the reimbursing the Surveyors of their Money laid out for the Repair of the High-ways, or of such Inhabitant or Inhabitants, as the Money shall be levied upon; which Rate so made and confirmed, shall be collected by the Surveyor or Surveyors; and he or they

they, within a Month next after the making and confirming the Rate, must pay unto the Inhabitant or Inhabitants such Money so levied on him or them, as before recited.

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C H A P. LXXXVI.

*Several Matters relating to Justices of Assize, and Justices in their Sessions of Peace, concerning Surveyors; with Law Matters relating to them.*

**J**ustices of the Assize, and Oyer and Terminer, Justices of the Peace in their Sessions, and Stewards of Leets on Law-days may hear and determine Offences against the Statute of the 18 *Eliz.* and the Surveyors who are to Levy the Penalties and Forfeitures of that Statute, and the Constables and Church-wardens who are in default of the Surveyors, to Levy the same, are to yield up their Accounts to them, as appointed in 2 and 3 *Phil.* and *Mary Chap.* 8. and 5 *Eliz. Chap.* 13.

All Defects of Repairs of Cause-ways, High-ways, Pavements or Bridges, shall be presented in the County where they lie, and not elsewhere; and that no such Presentment or Indictment shall be removed by *Cerriorari* into the Queens-Bench, or otherwise, out of the said County, till such Presentment or Indictment be first traversed, and Judgment thereupon given, 22 *Caroli 2. Chap.* 12.

And no Indictment, or Presentment, or Order, by Virtue of the Statute of 3 and 4 *W. and M.* is to be removed out of the County unto any other Court relating to High-ways, &c. but are to be determined in the County where the same doth lie, and not elsewhere.

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All Actions against any Person or Persons for any thing done by means of the Act of 22 *Caroli* 2. for repairing the High-ways, shall be laid in the proper County where the Fact was done, and not elsewhere, and to it the Defendant may plead the general Issue, and if there be a Verdict for the Defendant, or the Plaintiff be Non-sued, or discontinue his Action, the Defendant shall recover treble Cost, sustained by reason of such Action or Suit, and by the 3 and 4 of *W. and M.* in such Cases the Defendant may plead the general Issue, and give the special Matter in Evidence; and if the Plaintiff be Non-sued, or forbear prosecution, or a Verdict pass against him or her, the Defendant or Defendants shall recover double Costs.

Trustees of Lands given to the use of maintaining Pavements, Cause-ways, High-ways and Bridges, are obliged to let them to Farm at the most improved Rent, without any Fine, and the Justices of the Peace in their open Sessions, may order the improvement and employment of such Lands, or the profits arising thereby, other than such Lands as have been given to the uses aforesaid, to any College or Hall in either of the Universities, that have Visitors of their own, according to the Will of the Donor; if it appear to them the Persons have been faulty or negligent in the performance of their Trust, 32 *Car. 2. Chap. 12. Kebles Statutes, Fol. 1394. Sect. 2. Wingates High-ways, Sect. 32.*

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### C H A P. LXXXVII.

*Directions to Surveyors in Case of Rescues upon Seizure, and what relates as to Penalties concerning Wains or Carriages on the Road.*

**I**F any Person or Persons shall resist or make forcible Opposition against any of the Persons employed



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ployed in the due Execution of the Acts of Parliament 2 and 3 P. and M. 5. and 18 Eliz. 22 Car. 2. made for the more effectual Amendment of the High-ways, or shall rescue any Goods or Cattel taken in Distress by virtue thereof, being convicted by the Oath of one credible Witness before any one Justice of the Peace, or by the view of the Justice himself; for every such Offence the Offender shall forfeit 40 s. and if not paid in seven days, the Party to be committed to the County Goal where the Offence was committed, to remain till paid; and this is to be delivered to the Surveyor or Surveyors of the High-ways in the Parish where the Offence was committed, and employed for the amending the said Ways, 22 Car. 2. Chap. 12.

All Travelling Wains, Carts or Carriages, by way of common-Carriage, are not to go with a Team on the publick High-ways with above five Beasts at length, and if they shall drive with a greater number of Horses or Oxen, they shall all draw in pairs, that is, two a Breast, for such number as they shall use, except one Horse: And in defect of this, the Offender or Owner of the Waggon, Carriage, &c. forfeits 40 s. one third part to the Surveyors of the High-way of the Town, Village or Hamlet where the Offence shall be committed, another third to the Overseers of the Poor, and another to the Informer; and this to be imposed on the Offender by any one Justice of the Peace of the place or Division where the Offence is committed, upon the Oath of one credible Witness, or upon the Justices own view, and to be levied by the High Constable or other Officer of such Place or Division, by Warrant. And a Surveyor seeing and suffering Waggons or Carts to pass with more Horses, &c. than mentioned, or in any other Order, may upon Conviction

viction for such his neglect, be amerced by the Justice in any Sum under Forty Shillings, to be levied on his Goods and Chattels.

This is very useful to be known by Country People and others, for the ending and hindering many Controversies that too frequently arise, to their great Trouble and Cost, through Ignorance.

1. If a private Way be stopt, or streightned, or other Injuries done to him or them, that have a right to pass there, and hath a free hold in the Estate for which he claims such right; the Party grieved in such case may have an Assize of Nufance, *Quare injuste obstruxit*, &c. and if he be no Freeholder, he may have an Action on the Case, if he be obstructed in his Way: nay, it has been resolved and adjudged, that the Party if he be damaged in this, is at Liberty to bring either an Assize or an Action on the Case, whether the Way be in part or wholly stopt; and indeed Actions upon the Case are of late most usually brought.

2. If a High-way be not repaired, and I suffer Damage by the moiling or spoiling my Cattel or Goods, I cannot have an Action on the Case against him that ought to repair it; for this is an Action popular, and in no such Case a single Person shall have an Action, but it shall be presented in the Leet or Town, and there be redressed and punished.

3. If a Man lays Logs of Wood or any such Obstruction in the High-way, that by means thereof any Person is thrown from his Horse, wounded or bruised; if they have lain there by the space of two Months or such other time, an Action on the Case lies against the Party that laid the Logs, &c. though they be so laid before his Door in a Town, Gate, or Street, for this is a Nufance.

4. If a Pit or Ditch be digged in the High-way, and Men or Cattle fall in, and are killed or lamed, there

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there lies an Action against the Party that digged it, and delayed to fill it up again, and he shall be obliged to pay for the loss of the time of a Manservant so lamed or wounded, till he recover, and this a Master may have for his Servant so hurt or maimed, if by that means he looses his Service.

5. If a Gate be set and hung cross an Highway, where no Body hath been in antient time, tho' it be fixed and tied that it may be opened and shut at pleasure; yet this is a Nufance, for it is not so free and easie a passage as if no such Gate had been, and any Person so offended may pull down such a Gate, Let, or Hindrance.

6. If the Owner of Land, stop a usual way, and Lease it to another, who doth not remove that Hindrance, an Action on the Case may be brought against the Lease, and so if a Nufance be erected in my time, and I Devise the Land, and the Nufance be still continued, the Devisees may have an Action upon the Case for the Continuance of a new Nufance.

7. If one Man has a way over another Mans Ground, and by rooting of Cart-wheels, the way so digged and drowned, that the Party cannot so well use it as formerly; he cannot dig and drain in anothers Ground; but how ill convenient soever it is, the Party owning the Ground may suffer it so to remain.

8. If a Person be rightly seized of a Wast, joining to the High-way, and digs a Pit 30 Foot from the said Way, and Cartel straying unto the Wast, fall into the Pit, and are killed, or wounded; an Action lies not against the Party who digged the Pit, because of the making of it in the Wast, and not in the High-way; was no wrong to the Owner of the Cattel, for it was his own Neglect in looking no better after them, that they escaped into

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into the Wast; but if the Pit had been in the High-way as aforesaid, an Action on the Case lies.

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### C H A P. LXXXVIII.

*Directions to the Scavengers and Managers of Sewers in the Cities of London and Westminster, the Borough of Southwark, relating to their Duty and Office.*

**A**S for the Cities of *London* and *Westminster*, their Scavengers are in the Nature of Country Surveyors, where Commissioners are over them appointed, to take care they do their Duty, and to take Cognizance of Vaults, Common-drains or Common-shoars, to amove Nufances, and to sue after the Pavements, Payment of Raker, and what else shall be amiss, also in the *Borough of Southwark*, and places adjacent, the aforesaid Cities, in them the House-keepers are to sweep and cleanse the Streets, Lanes and Alleys, and publick places before their Houses, and bring out their Dirt or Soil fit for the Raker to take up and carry away, and the Mayor, Aldermen, and Common Council of the City of *London*, may set out and purchase Grounds for Lay-stalls, to receive the Dirt and Rubbish carried out of the City, and for other Materials and Commodities. And any Person upon Complaint of Nufances in Defect of Pavement, Dirt or Rubbish lying beyond the usual Time, neglect in Rakers in not duly coming, and giving notice to bring out Dust or Dirt by Ring of Beil, or such like warning, may by the Commissioners be redressed, and the Parties offending punished, as the Statutes in those Cases provide and direct.

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No Person under the penalty of five Shillings, is to throw any Dirt, or Rubbish, or noisom thing into the Streets, that may be a Hinderance or give Offence, nor into any Lanes or Places of publick passage, &c. or against a Wall of any Church, Church-yard, or any House; and if they throw it into any common Vault to Sink, to hinder the Current of the Drains, they forfeit 40 s. 14 *Car. 2. Chap. 2.* And those that sweep not up their Dirt, for the Scavenger to take away, before their Houses in Streets, Alleys, and other publick places, forfeit 13 s. 4 d. for every Neglect, 13 *Car. 2. Chap. 2.*

If any Hoop, Wash or Cleanse any Barrels or other Casks, or set out empty Casks to mend, or hew rough Timber, saw Stone, for each of these Offences they are to pay 20 s. and every Householder is to keep the Streets, Lanes, and other publick passages, so far as belongs to him well paved unto the Channel or middle of the Street or Lane, under the penalty of 20 s. for every Rod that shall be defective, and 20 s. a Week till it shall be paved or mended. To enquire after Offenders, and make such Redresses as are found Aggrievances, by applying themselves to the Commissioners, &c. and by the Statute of the 11<sup>th</sup> and 12<sup>th</sup> among other things it is enacted, that the Rakers, Scavengers, and other Officers there to appointed, shall every Day in the Week, *Sundays* and other Holy-days excepted, bring their Carts and other Carriages unto their several Charges and Divisions, where they can pass, and give Notice at or before, by the ringing of a Bell there, and in Alleys and other places where they cannot pass, that the People may sweep up and bring out their Soil, which the Rakers are every Day obliged to carry away under penalty of 40 s. for every Offence.

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In the Place and Division where any new Street shall be made, the Justices of the Peace of that Division may take a View, and if they think it convenient to be paved, or otherways amended, they are to certify the same under their Hands, to the Justices of the Peace at the next General Quarter-Sessions, for the place where the Street or Streets are, who are to take order for the paving or amending as they shall think fit, and all People concerned therein, by a limited time ordered by the Justices, are to be complying, under the penalty of 40s. for every Perch, upon such Offence or Default, and accordingly for a greater or lesser Quantity, and the like Sum for every Week it shall remain so unpaved or amended; and any Scavengers duly chosen, refusing to take upon themselves the Office, Forfeits Ten Pounds for such Refusal, the other two to be chosen within seven days after such refusal, and to forfeit as the former upon the refusal, and the Penalties to be paid to the Surveyors of the High-ways of the place, to be employed towards the amending the High-ways and Streets of the same Parish, Ward or Division, are to be levied by Distress and Sale of Goods and the Chattels of the Offenders, by Virtue of a Warrant from a Justice of the Peace in any of the places where the Offence is committed, to be directed therefor that purpose to the Constables or other Officers of the said Parish, or any two or more of them, and reasonable Charge for the Distress being deducted, the Overplus is to be returned to the Owner if any there be, and for want of Distress or Non-Payment within six Days, upon Demand, or Notice hereof at the House of the Offender in Writing, he and or they so offending, may be committed to the next common Goal of the County, City, or Place respectively, by Warrant from any of the said Justices of the Peace under Hand and Seal, and there to re-

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remain without Bail or Mainprize, till payment be made as aforefaid, and fo for every Perfon elected and refufing the Office, &c.

### C H A P. LXXXIX.

*Within what time Rates are to be made, and by whom. How the Scavengers are to account for them, and the Penalties upon Refufal. Affeffment how to be made and levied, &c.*

**W**ithin Twenty Days after the Scavengers are elected, the Conftable, other Officers and Parifhioners, or the greater number of them prefent, are to make a Rate or Affeffment, according to pound Rate upon the Inhabitants of their Parifh, to be allowed and confirmed by two Juftices of the Peace of the place, &c. to be collected quarterly; and if upon demand of the Scavenger, or other Officer appointed to collect the fame, Payment be refufed, Diftreffs may be made by Warrant under the Hands and Seals of two Juftices of the Peace, to be levied by Diftreffs and Sale of Goods, or for want of fuch Diftreffs and Non-payment, the Offender to be Imprifoned till Payment be made, unlefs a Peer of the Realm.

The Money fo collected is yearly to be accounted for by the Scavengers, for the time being, or two or more of the Juftices of the Peace refiding in or near the places, for which Scavengers are appointed, within 28 Days after the new Scavengers are chofen for the Year enfuing, and to be paid in to the Hands of the new Scavengers, if any remain undifburfed in their Hand; and two fuch Juftices of the Peace upon refufal to make Account, may commit the Refufer or Refufers to Prifon without



Bail or Mainprize, till he or they account and pay the Remainder.

Where in a Parish there are such High-ways as cannot be amended without the help of Assessment, then or more Assessments from time to time may be made upon all the Inhabitants, Occupiers and Owners of Lands, Houses, Tenements, or any personal Estate there, usually rateable to the Poor, to be allowed, levied, and collected, by such Persons as the said Justices of the Peace at their General Quarter-Sessions shall appoint and direct, and the Money so raised to be accounted for, and employed towards repairing such High-ways from time to time as the Justices shall appoint or order to be levied, by the Distresses and Sale of the Goods of the Persons so assessed, upon Non-payment of the same within 14 Days after Demand.

## C H A P. CX.

*Several things very useful to be known to Surveyors, Scavengers, as Commission of Sewers, Weights of Hay, Hay or Straw Carts standing in the Streets, Wheels of Carts, their Size; keeping of Swine, and putting out Lights, Lamp-lights, &c.*

**A**LL the Sinks, Sewers and Vaults made since the Twelfth of King Charles the Second, in the City and Liberties of Westminster, &c. are under the Care of the Commissioners of Sewers, who have Power to cleanse, alter, or so order them as to them shall seek best for Conveniency, to make new ones, and to take away all Nuisances, and to take away any cross Gutters or

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Channels in all or any of the Streets or Lanes within their Division.

Every Truss of old Hay brought or offered to be sold within the Cities of *London* and *Westminster*, and other places within the Weekly Bills of Mortality, is according to the Statute to weigh 56 Pound at the least, from the last Day of *August* to the first Day of *June*, and from the first Day of *June*, to the last Day of *August*, being new Hay of the Years growth to weigh Sixty Pounds; but if old Hay of the last Years growth, 56 as afore said, and none to suffer their Waggon or Carts to stand in the places afore said, loaded with Hay or Straw, to sell the same, after two o the Clock in the Afternoon, from *Michaelmas* to *Lady-day*, nor after three from *Lady-day* to *Michaelmas*, on penalty of five Shillings for every Offence or Neglect, one half to the Poor and the other to the Informer, upon Commission of the Offence; but if the Justice of Peace see on view, then upon Conviction one half to the Poor, and the other half to the Scavenger, upon Default of payment for the paving and cleaning the place, or otherways to the Relief of the Poor as afore said. This to be levied by Warrant by Distress and Sale of the Offenders Goods, and Chattels, by the Constable, Head-borough &c. of the Parish where the Offence is committed, and in Default of Distress, or Non-payment within six days, upon Notice in Writing left at the Offenders House by the Constable, or Head-borough, where it is not by the Act of 2 *W.* and *M.* otherways provided, unless the Party be a Peer of the Realm, he is to be committed to the common Goal of the City or County respectively by Warrant; and to remain without Bail or Mainprize till payment. And by the same Statute the Wheels of every Cart or Dray to be used for new

any Carriage whatsoever, from any place within the said Cities and Places within the same, where the Streets are paved, are to be made to contain in full Breadth 6 Inches in the Felly, and must not be shod or wrought about with Iron Work, nor drawn with above two Horses after they are up Hill from the Water-side, upon Forfeiture of 40 s. for every Offence, to be levied by Warrant on Goods and Chattels, in Distress, as other the like Cases, though this extends not to Country Carts or Waggon, that shall bring Goods to the Cities or Places aforesaid, or shall carry any Goods half a Mile beyond the paved Places of the Cities, Streets, &c. However by an Act of 3 and 4 W. and M. Chap. 12. this last Clause seems to be altered; for any Inhabitant of any of the Parishes within the Weekly Bills of Mortality, who dwells off and from the Pavement, and uses his Cart as well off as upon the Pavement, or any Brewer or Scavenger, or other Person employed in carrying away the Dirt and Soil in Lanes, Streets and Alleys, may use shod Wheels for Dray or Cart, and narrower than six Inches in the Fellies, notwithstanding the former Act or any Law or Usage to the contrary. But this seems not to affect Carts, and such as carry Merchants or Shop-keepers Goods.

By the Act of 2 W. and M. no Person or Persons are to keep, breed, or feed Swine in any part of the House, Backsides of the paved Streets of the said Cities, Boroughs, or Parishes, where such Streets are contiguous, on penalty of forfeiting them to the use of the poor of the Parish where such Swine shall be kept.

All Householders in the Cities and Liberties of Westminster, and Counties of Surrey and Middlesex, comprized within the Bills of Mortality, are by a new Act, where their Houses adjoin to, and are near

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near the Street, to hang on the outside of their Houses next the Street, every Night from *Michaelmas-day* to *Lady-day*, Candles, or Lights in Lanthorns, from time to time as it shall grow dark, to continue burning till Twelve of the Clock in the Night, on pain of forfeiting 2 s. for every Default, unless such as shall agree to pay and make use of the Convex Lights or Lamps, to be placed at such Distance in convenient places of the Streets, as two or more Justices of the Peace shall approve of.

As for the several Acts for mending particular Ways, Bridges, &c. they are very many, and not concerning a Surveyor, in general. What is written may suffice, not doubting but considering what is set down, which is the most material, it will in a great measure inform him well to discharge his Office, to the content and satisfaction, not only of the Parishioners, but of the Laws, requiring him in all respects to perform his Duty, as a Trusty and knowing Surveyor or Scavenger.

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